

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

MD 11.1 NRC ACQUISITION OF SUPPLIES AND DT-14-11
SERVICES

Volume 11: Procurement

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EXECUTIVE SUMMARY

Management Directive (MD) and Handbook 11.1 are being revised to update the general policy guidance for commercial and non-commercial acquisitions. This revision—

1. Incorporates current policies, standards, and procedures.
2. Deletes information in the MD and handbook that essentially duplicates information contained in the Federal Acquisition Regulation (FAR) or Nuclear Regulatory Commission Acquisition Regulation (NRCAR). Information contained in or changes made thereto in the MD and handbook do not in any way make regulatory changes to the NRCAR or FAR.
3. Removes the exhibits from the handbook that are outdated or have been relocated and are available electronically.
4. Addresses recommendations resulting from OIG Audit Report OIG-12-A-02, "Independent Evaluation of the U.S. Nuclear Regulatory Commission's Contract Award Process," and OIG Audit Report OIG-12-A-18, "Audit of NRC's Contract Administration of the EPM Contract."

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I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission that the acquisition of supplies and services supporting the agency's mission is planned, awarded, and administered efficiently and effectively and is accomplished in accordance with applicable Federal statutes and procurement regulations. The primary implementing regulations are the Federal Acquisition Regulation (FAR) (Title 48 of the *Code of Federal Regulations* (CFR)) and the Nuclear Regulatory Commission Acquisition Regulation (NRCAR) (48 CFR Part 20), which further explains NRC's implementation of the FAR.

II. OBJECTIVES

- Achieve the best value for NRC's acquisition of supplies and services for commercial and non-commercial acquisitions from commercial firms, nonprofit organizations, universities, States, and other Federal agencies.
- Provide for the promotion of full and open competition in agency procurement actions.
- Support innovative ideas and procurement techniques within the legislative and regulatory framework to streamline procurement processes where possible.
- Promote fairness, openness, and transparency throughout the acquisition process.
- Maximize the use of small and small disadvantaged businesses.
- Maintain an open, collegial, and collaborative relationship with the public about NRC procurement opportunities.
- Ensure appropriate use of taxpayer funds when planning, negotiating, awarding, and administering contracts.
- Maximize use of strategic sourcing (i.e., enterprisewide contracting) to gain efficiencies and cost savings.
- Maximize the purchase of green products and services to the extent practicable.
- Support and promote the use of electronic and information technology (EIT) to achieve the agency's objectives for accessibility, including the use of accessible devices and software for persons with disabilities.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Chairman

1. Has contracting authority which is delegated to the Executive Director for Operations (EDO). (See NRCAR 2001.601.)
2. Reviews quarterly agency acquisition reports.

B. Executive Director for Operations (EDO)

1. For the purposes of NRCAR 2001.601 and the FAR, serves as head of the agency to execute the procurement function.
2. Performs duties required by Executive Order 12931, "Federal Procurement Reform," to ensure the adequacy of the agency's procurement function.
3. Provides oversight and direction, as Audit Followup Official (AFO), to ensure that audit recommendations included in Office of the Inspector General (OIG) reports are appropriately resolved.
4. Waives the organizational conflicts of interest (OCOI) policy in specific cases, if in the best interest of the United States, upon the recommendation of the Senior Procurement Executive (SPE) and after consultation with legal counsel.
5. Approves, as head of the agency, contracts awarded without full and open competition with a performance period exceeding 1 year based upon unusual and compelling circumstances (FAR 6.302-2). (Note that the Competition Advocate serves as the approving authority for sole source contracts with a period of performance less than 1 year. See Section III.S.2(c) of this directive.)
6. Advises the Source Evaluation Panel (SEP) on post-employment matters (NRCAR 2009.100).
7. Determines when it is not in the public interest to use competitive procedures and gives Congress written notice 30 days before award. This authority cannot be delegated (FAR 6.302-7).

C. Deputy Executive Director for Corporate Management (DEDCM)

1. Serves as Senior Accountable Official for Data Quality.
2. Provides senior-level oversight of strategic acquisition initiatives and established Portfolio Councils (PCs), including serving as chair of the Information Technology/Information Management Portfolio Executive Council.

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3. Serves as chair of the Strategic Sourcing Group (SSG).
 4. Serves as the Chief Information Officer (CIO) and provides unclassified technology services to all components of the agency. For acquisitions, the CIO—
 - (a) Serves as the primary responsible official for establishing the agency Section 508 program, provides leadership of the program, and appoints the agency Section 508 coordinator.
 - (b) Ensures Section 508 accessibility considerations are incorporated into the planning, operation, and management of any EIT that is developed, used, or maintained by the agency.
 - (c) In collaboration with the Chief Acquisition Officer (CAO), ensures that Section 508 is considered in EIT products and services procured by the agency.

D. Office of the General Counsel (OGC)

1. Reviews solicitations, ratification requests for unauthorized commitments, justifications for other than full and open competition (JOFOC), requests for advance payments, protests, claims, disputes, terminations, novations, and assignments of claims, bankruptcy, and contracts/task orders/purchase orders for legal sufficiency or when requested by the contracting officer (CO) for actions that normally do not require review by the Office of the General Counsel (OGC).
2. Advises the SPE and the CO during the acquisition process and other agency officials on a need-to-know basis, based on the legitimate requirement of the person to know, access, or possess the information on all aspects of the procurement.
3. Represents the agency when a contract award action is protested by offerors and coordinates the protest process with the Acquisition Management Division (AMD), Office of Administration (ADM) (hereinafter “AMD”), and affected offices.
4. Advises AMD on significant procurement issues (e.g., major acquisition planning, termination, claim based on the Prompt Payment Act of 1982 (31 U.S.C. 3901 et seq.), debarment, suspension of payment, conflict of interest, ethics, ratification, and protest).
5. Represents the agency before the Board of Contract Appeals and the courts when contractors file claims under the Contract Disputes Act of 1978 (41 U.S.C. 601-613) and otherwise, and coordinates the handling of those claims with AMD and affected offices.
6. Provides overall legal guidance, advice, and support to AMD employees regarding procurement matters during all phases of the acquisition life cycle.

7. Attends Interagency Suspension and Debarment Committee meetings.
8. Serves as a member of the SSG.

E. Office of the Inspector General (OIG)

1. Conducts investigations and reports cases involving fraud, waste, and abuse to ascertain and verify the facts regarding contractor misconduct and the integrity of NRC programs and operations.
2. Investigates allegations of fraud within the procurement system.
3. Directs audits and evaluations to assess the management and conduct of NRC administered or financed programs and operations.
4. Audits procurement policies, procedures, processes, and payments.
5. Has independent contracting authority under the Inspector General Act of 1978, as amended.
6. Coordinates with AMD for the conduct of pre-award and post-award external audits as required by the FAR.
7. Processes contractor disclosures submitted to meet the FAR mandatory disclosures rule in accordance with Public Law 110-252, Title VI, Chapter 1, "Contractor Code of Business Ethics and Conduct."

F. Chief Acquisition Officer (CAO)

1. Serves as the primary official responsible for managing the agency's acquisition activities. This position is held by the Director of ADM.
2. Advises and assists the EDO, who serves as head of the agency to execute the procurement function, and other agency officials to ensure that the agency's mission is achieved through the management of the agency's acquisition activities.
3. Monitors the performance of acquisition activities and acquisition programs of the agency, including development of the agency's acquisition workforce; evaluates the performance of those programs on the basis of applicable performance measurements; and advises the EDO regarding the appropriate business strategy to achieve the agency's mission.
4. Increases NRC use of full and open competition in the acquisition of property and services by establishing policies, procedures, and practices that ensure that the NRC receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill NRC requirements (including performance and delivery

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- schedules) at the lowest cost or best value, considering the nature of the property or services procured.
5. Increases appropriate use of performance-based contracting and performance specifications.
 6. Makes acquisition decisions consistent with all applicable laws and establishes clear lines of authority, accountability, and responsibility for acquisition decisionmaking within the executive agency.
 7. Manages the direction of acquisition policy for the agency, including implementation of the unique acquisition policies, regulations, and standards of the agency.
 8. Develops and maintains an acquisition career management program in the agency to ensure that there is an adequate professional workforce.
 9. Supports the strategic planning and performance evaluation process by—
 - (a) Assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of those requirements for facilitating the achievement of the performance goals established for acquisition management;
 - (b) Developing strategies and specific plans for hiring, training, and developing professionals to address any deficiency in meeting those requirements; and
 - (c) Reporting to the head of the agency on the progress made in improving acquisition management capability.
 10. Collaborates with the Chief Information Officer to ensure Section 508 requirements are incorporated into any EIT products and services procured by the agency.

G. Director, Office of Administration (ADM)

1. Serves in the following roles:
 - (a) Senior Procurement Executive,
 - (b) Competitive Sourcing Official,
 - (c) Inventory Appeal Authority,
 - (d) Suspension and Debarment Official,
 - (e) Senior Accountable Official for Suspension and Debarment,
 - (f) Chief Acquisition Officer (may be redelegated to the Deputy Director of ADM on a temporary basis),

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- (g) Acquisition Career Manager (may be redelegated to the Director of AMD),
 - (h) Inventory Challenge Authority (redelegated to the Deputy Director of AMD),
and
 - (i) Competition Advocate (redelegated to the Director of AMD). As SPE, approves noncompetitive contracts in accordance with FAR 6.304.
2. Monitors the agency's procurement system.
 3. Monitors agency procurement rules, reporting requirements, contractual requirements, certification procedures, and other administrative procedures.
 4. Monitors development of procurement goals, guidelines, and innovation; measures and evaluates procurement office performance against stated goals; enhances career development for the procurement workforce; and advises the agency head whether goals are being achieved, in accordance with Executive Order 12931.
 5. Manages and monitors direction of the acquisition system, including acquisition policies, regulations, and standards of the agency.
 6. Reviews and approves noncompetitive justifications with former NRC employees within 2 years of the date of a requisition, after consulting with the EDO, in accordance with NRCAR 2009.100(d).
 7. Serves as Senior Accountable Official for Suspension and Debarment and performs the following functions:
 - (a) Assesses the agency's suspension and debarment program, including the adequacy of available training and resources (including, where appropriate, full-time staff).
 - (b) Ensures that the agency maintains effective internal controls and tracking capabilities, taking into consideration the agency's mission, organizational structure, and level of procurement and grant-making activities.
 - (c) Ensures that the agency participates regularly on the Interagency Suspension and Debarment Committee (note that OGC attends committee meetings).
 - (d) Reviews internal policies, procedures, and guidance to ensure that the agency is protecting the Government's interests and taxpayer funds by effectively using suspension and debarment when appropriate, as well as other remedies available to the agency that are designed to ensure, before an award is made, that potential contractors and recipients have the requisite business integrity.
 - (e) Ensures that the agency's award officials review relevant databases and other information sources before awarding any Federal contracts to prevent awards

from being made to entities that are suspended or debarred or are otherwise nonresponsible.

(f) Takes prompt corrective action when the agency determines that it improperly made an award to a suspended or debarred entity. Appropriate action includes addressing the specific award and the establishment of systemic controls and procedures to prevent recurrence.

8. Notifies OIG if a contract award was improperly made to a suspended or debarred entity.

H. Chief Human Capital Officer (CHCO)

1. In the event of an Office of Management and Budget (OMB) Circular A-76, "Performance of Commercial Activities," study, verifies the number, grades, and kinds of positions associated with the activities that may be contracted out.
2. Assists AMD with implementation of the Acquisition Training and Certification Program.

I. Director, Computer Security Office (CSO)

1. Provides and updates EIT security clauses for inclusion in NRC solicitations and contracts that include EIT.
2. Establishes and updates rules of behavior governing acceptable computer use. The rules of behavior apply to all NRC employees, contractor personnel, vendors, and agents (users) who have access to any system operated by the NRC or by a contractor or outside entity on behalf of the NRC.
3. Establishes and updates the annual computer security awareness training course for all NRC users.
4. Establishes and updates role-based EIT security training requirements.
5. Reviews EIT and EIT-related requisitions for conformance with established EIT security requirements.

J. Director, Office of Information Services (OIS)

1. Manages and accounts for EIT resources.
2. Establishes and ensures that appropriate agencywide EIT resource acquisition policies, plans, and procedures are in place to meet the requirements of EIT-related Federal statutes, regulations, and policies. Examples include the following:
 - (a) OMB Circular No. A-127, "Financial Management Systems";

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- (b) OMB Circular No. A-130, "Management of Federal Information Resources";
 - (c) Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and the Electronic and Information Technology (EIT) Accessibility Standards (36 CFR Part 1194);
 - (d) Section 208 of the E-Government Act of 2002 (Pub. L. 107-347);
 - (e) Office of Federal Procurement Policy (OFPP) Memorandum of June 14, 2012, "Contracting Guidance to Support Modular Development"; and
 - (f) Chief Information Officer Memorandum of December 9, 2010, "25 Point Implementation Plan to Reform Federal Information Technology Management"; and
 - (g) OMB Memorandum M-11-29, "Chief Information Officer Authorities," dated August 8, 2011.
3. Provides guidance to NRC offices that are planning to procure EIT resources through AMD.
 4. Provides support to NRC offices, as requested, in preparing a statement of work for EIT resource acquisitions.
 5. Assists NRC offices in evaluating EIT procurements to ensure consideration of access by individuals with disabilities in accordance with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d).
 6. Reviews EIT and EIT-related requisitions for conformance with established EIT resource acquisition policies, plans, and procedures.

K. Director, Office of Small Business and Civil Rights (SBCR)

1. Develops, coordinates, and administers the NRC Small Business Program (SBP) as it pertains to Sections 8 and 15 of the Small Business Act, as amended.
2. Assists program officials in their effort to meet mission objectives through the use of capable and qualified small businesses.
3. Represents the NRC before Congress and Federal agency task forces on small business and economic development matters.
4. Implements, develops, and publishes small business procurement policy, procedures, and guidelines based on small business statutory authority in conjunction with AMD and the requirement offices and regions as they relate to the NRC SBP.

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5. Establishes a biannual NRC small business prime and subcontract goals program, monitors the results of the program on a quarterly basis, and prepares reports of NRC's small business contract performance in making small business awards in the program areas covered by Management Directive (MD) 11.1.
 6. Coordinates with office directors and regional administrators for early identification of requirements that offer the potential for small business set-asides, sole source awards, partial set-asides, or any other incentivized mechanisms that foster the maximum practicable prime and subcontract opportunities for small businesses.
 7. Reviews NRC Form 827, "NRC Small Business Review," and NRC Form 828, "NRC Small Business Subcontracting Plan Review," to ensure compliance with small business laws and to make appropriate acquisition method recommendations that provide the maximum practicable prime and subcontract opportunities for small businesses.
 8. Reviews proposed procurements in the Advance Procurement Plan (APP) that exceed the simplified acquisition threshold to make recommendations for small business participation for the requirement offices and regions and AMD.
 9. Provides capability statements for small business vendors for agency requirements.
 10. Reviews subcontracting plans for accuracy, completeness, and adequacy of small business usage.
 11. Produces an annual agency forecast of contract opportunities, which identifies requirements suitable for small business participation, in coordination with office directors and AMD.
 12. Reports small business information to the U.S. Small Business Administration (SBA) for inclusion in its annual small business procurement scorecard, in collaboration with AMD.
 13. Serves as a member of the SSG.

L. Office Directors (ODs)

1. Submit the annual office APP and any updates to the Director of AMD.
2. Serve as designating officials (DOs) within their offices for approval of procurement actions, ensure the accuracy of JOFOCs and ratification actions, and provide approval if appropriate. The responsibilities of the DOs may not be redelegated below the level of deputy division director for actions valued at or above the micro-purchase level (see FAR 2.101), unless otherwise approved by the Head of Contracting Activity (HCA).
3. Ensure that contracting officer's representatives (CORs) receive required training and certification consistent with OMB policy and NRC training guidelines.

4. Ensure SEPs have complete autonomy to evaluate contractors' proposals and make award recommendations to the CO.
5. Ensure that CORs perform their responsibilities as prescribed in this handbook and follow statutory, regulatory, and other agency policies and procedures in planning, awarding, and administering contracts and contracting actions.
6. Ensure that SSG information is submitted to AMD for concurrence, before submission to the SSG, for all new contracts or modifications estimated at or above the dollar threshold amount stated in agency guidelines.
7. Attend SSG meetings for office procurements or provide office representation in their absence.

M. Regional Administrators (RAs)

1. Act within the scope of their authority as COs, as delegated by the Director of AMD. This authority includes executing and modifying acquisition vehicles (including, but not limited to, purchase orders and interagency agreement actions with the exception of laboratory agreements) and settling claims and terminations. This authority may not be redelegated.
2. Approve ratification requests for unauthorized commitments in consultation with OGC for all requests regardless of dollar value and with the Competition Advocate for actions above the micro-purchase threshold.
3. Serve as DOs within their offices for approval of requisitions and ensure the accuracy of JOFOCs and ratifications.

N. Deputy Director, Office of Administration (ADM)

1. Serves as CAO, as delegated by the Director of ADM, on a temporary basis during times of absences or unavailability.
2. Serves as Inventory Challenge Authority, as delegated by the Director of ADM.

O. Director, Acquisition Management Division (AMD), Office of Administration (ADM)

1. Serves as HCA to develop and implement agencywide contracting policies and procedures relating to the NRC's acquisition of supplies and services in coordination with affected NRC offices, and ensures quality and timely assistance on procurement matters is provided to NRC offices as needed (NRCAR 2002.100).
2. Provides warrant authority directly to regional administrators and contracting specialists.

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3. Serves as agency task/delivery order ombudsman to review contractor complaints or concerns regarding task or delivery orders and ensures that contractors are afforded a fair opportunity to be considered, consistent with the procedures in the contract and FAR 16.504.
 4. Prescribes and publishes agencywide procurement policies, regulations, and procedures.
 5. Establishes clear lines of contracting authority and accountability, including issuance of contracting officer warrants.
 6. Establishes and makes changes to the agency's procurement system.
 7. Establishes and makes changes to the agency procurement rules, reporting requirements, contractual requirements, certification procedures, and other administrative procedures.
 8. Appoints a representative in AMD to serve as the Acquisition Career Manager.
 9. Establishes and updates career education programs for procurement professionals to ensure a highly qualified procurement workforce following OMB guidelines.
 10. Delegates responsibility for executing and modifying contracts, financial assistance relationships, and other actions to warranted contracting officers.
 11. Delegates authority to branch chiefs and COs through issuance of warrants.
 12. Notifies the AFO, who in this agency is the EDO, of any disagreement with OIG concerning resolution of contract audit recommendations before taking final action.
 13. Ensures the implementation of Federal policy regarding the performance of commercial activities following OMB Circular A-76.
 14. Monitors and ensures high quality service and products by AMD.
 15. Approves, as HCA, ratification requests of unauthorized commitments for headquarters in accordance with FAR 1.602-3.
 16. Manages, with assistance from the Office of the Chief Human Capital Officer, the design, development, and implementation of the Federal Acquisition Certification in Contracting, Federal Acquisition Certification for Contracting Officer's Representatives acquisition training and certification programs, and Federal Acquisition Certification for Program and Project Manager.
 17. Supports the strategic acquisition program, including conduct of the PCs, spend analysis, and implementation and management of agency enterprisewide contracting efforts.
 18. Provides concurrence for SSG requests and attends SSG meetings.

19. Serves as agency Competition Advocate, unless redelegated to the Deputy Director level. As HCA, approves noncompetitive actions in accordance with FAR 6.304.
20. Reviews and approves FAR deviations in accordance with FAR 1.402 and NRCAR 2001.4.

P. Director, Division of Facilities and Security (DFS), Office of Administration (ADM)

1. Plans, develops, establishes, and administers policies, standards, and procedures for the overall NRC Facility Security Program, including the approval of facilities for the handling and storage of classified and sensitive unclassified information, as provided in MD 12.1, "NRC Facility Security Program."
2. Provides and updates security clauses for inclusion in NRC solicitations and contracts.
3. Reviews completed NRC Form 187, "Contract Security and/or Classification Requirements," indicating the level and type of security access needed by a contractor to perform (i.e., meet NRC contract requirements), including access to classified information.
4. Initiates necessary actions to confirm an existing facility security clearance or establishes a clearance for the facility.
5. Reviews Standard Form (SF) 85, "Questionnaire for Non-Sensitive Positions," (e-QIP) or SF 86, "Questionnaire for National Security Positions," for proposed contractor candidates to NRC contracts and conducts security investigations.
6. Reviews NRC Form 89, "Badge Request," and issues badges or passes to approved contractor employees for required access to Government buildings or facilities.
7. Cancels or terminates security clearance access or requests.

Q. Controller, Division of the Controller (DOC), Office of the Chief Financial Officer (OCFO)

1. Records obligations against contracts and modifications that have been approved by AMD and reviews documents for completeness and accuracy of accounting data (e.g., fiscal year, budget and reporting number, job code, and budget object classification).
2. Maintains records of payments and outstanding unpaid contract obligations and files of unpaid invoices and provides reports to NRC program offices and AMD.
3. Coordinates with AMD regarding available unexpended obligations during early contract closeout.

4. Coordinates with AMD to ensure contract holdback funds are recorded for Cost-Plus-Fixed-Fee contracts or task orders where fixed-fee amounts exceed 85 percent of the negotiated fee amount established in the contract.
5. Coordinates with AMD to resolve contract payment issues.

R. Competition Advocate

1. The Director of AMD serves as agency Competition Advocate and fulfills the full complement of duties and responsibilities established in FAR 6.502. This authority may be redelegated to the Deputy Director of AMD.
2. The Competition Advocate—
 - (a) Reviews and approves JOFOCs for proposed contracts or modifications exceeding the dollar threshold in FAR 6.304(a)(2).
 - (b) Reviews and approves exceptions to the requirement to place notices of proposed contract actions (synopses) in Federal Business Opportunities (FedBizOpps) based upon unusual and compelling urgency (FAR 5.202).
 - (c) Reviews and approves exceptions to the requirement for full and open competition for contracts of 1 year or less in duration based upon unusual and compelling urgency (FAR 6.302-2). (Please note that the EDO serves as the approving authority for sole source contracts with a period of performance exceeding 1 year. See Section III.B.5 of this directive.)
 - (d) Reviews and makes recommendations to the HCA and regional administrators for ratification requests of unauthorized commitments greater than the micro-purchase threshold.

S. Strategic Sourcing Group (SSG)

1. The SSG provides senior-level oversight of strategic acquisition business process improvements.
2. The SSG has seven members:
 - (a) Deputy Executive Director for Corporate Management, who chairs the SSG;
 - (b) Deputy Executive Director for Reactor and Preparedness Programs;
 - (c) Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs;
 - (d) Deputy Chief Financial Officer;
 - (e) Senior Procurement Executive;

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- (f) Deputy Assistant General Counsel/Special Counsel for Acquisition (OGC); and
 - (g) Director, Office of Small Business and Civil Rights (SBCR).
3. The SSG—
- (a) Continues the function of the Procurement Oversight Committee (POC) to enhance the agency's procurement oversight process by ensuring that proposed procurement actions (i.e., commercial contracts, DOE laboratory agreements, interagency agreements) at \$1 million and above meet agency and programmatic needs and expectations and that documentation adequately supports the proposed procurements.
 - (b) Provides oversight of the Portfolio Councils (PCs).
 - (c) Ensures alignment between the acquisition process and the budget formulation and execution processes.
 - (d) Provides strategic feedback to commodity-centered recommendations of the PCs.
 - (e) Considers recommendations on enterprisewide contracts within PCs and across PCs.
 - (f) Monitors execution of strategic sourcing strategies of the PCs, including achieving agency socioeconomic contracting goals.
 - (g) Provides senior-level sponsorship of process improvements from the PCs.
 - (h) Communicates status and progress to the Chairman and the Commissioners.
 - (i) Prioritizes initiatives across PCs as needed.
4. The SSG meetings are also attended by the Director of AMD, requirement office representatives, the AMD branch chief, the CO/CS responsible for the acquisition, and the SBP manager in SBCR.
5. ADM provides secretarial support to the SSG.

T. Senior Procurement Executive

1. The Director of ADM, as the SPE, is responsible for managing the agency's procurement system and implementing unique procurement policies, regulations, and standards.
2. Serves as a member of the SSG.

U. Acquisition Career Manager

1. Develops the acquisition workforce, including identifying staffing needs, training requirements, and other workforce development strategies.
2. Proposes an annual budget to the CAO to develop the acquisition workforce to fulfill the requirements of OMB Policy Letter 05-01 and other agency human capital objectives.
3. Provides coordinated input to the CAO and Chief Human Capital Officer regarding short- and long-term human capital strategic planning for training, competency fulfillment, career development, accession, recruitment and retention, and other facets of human capital management affecting the acquisition workforce.
4. Recommends to the CAO a transition plan for meeting the requirements of OMB Policy Letter 05-01.
5. Ensures that agency policies and procedures for workforce management are consistent with those established by OFPP, as appropriate.
6. Coordinates with agency functional advisors to ensure fulfillment of the requirements of OMB Policy Letter 05-01.
7. Recommends to the SPE waivers to the GS-1102 for (1) education requirements and (2) training requirements, as authorized in OMB Policy Letter 05-01.
8. Maintains and manages consistent agencywide data on those serving in the agency's acquisition workforce in the Federal Acquisition Institute Training Application System.
9. Manages the acquisition workforce certification programs (i.e., Federal Acquisition Certification for Contracting, Federal Acquisition Certification for Contracting Officer's Representatives, and Federal Acquisition Certification for Program and Project Managers), including the approval and certification of individuals recommended under these programs.
10. Manages the warrants and delegations of procurement authority granted to acquisition workforce members.

IV. APPLICABILITY

The policy and guidance in MD 11.1 apply to all NRC employees.

V. DIRECTIVE HANDBOOK

Handbook 11.1 contains general explanations, guidelines, procedures, and management controls for acquiring supplies and services.

VI. REFERENCES

Code of Federal Regulations

Contractor Code of Business Ethics and Conduct (Pub. L. 110-252, Title VI, Chapter 1).

Federal Acquisition Regulation (FAR)—

36 CFR Part 1194, “Electronic and Information Technology Accessibility Standards.”

48 CFR Part 1, “Federal Acquisition Regulations System.”

48 CFR Part 20, “Nuclear Regulatory Commission Acquisition Regulation.”

Federal Property Management Regulations (FMR) (41 CFR 102-39).

Nuclear Regulatory Commission Acquisition Regulation (NRCAR) (48 CFR Part 20).

Prompt Payment Rules, September 29, 1999 (5 CFR Part 1315).

United States Nuclear Regulatory Commission (2 CFR Chapter XX).

Executive Orders

12931, “Federal Procurement Reform,” October 13, 1994, at <http://www.gpo.gov/fdsys/pkg/WCPD-1994-10-17/pdf/WCPD-1994-10-17-Pg2003.pdf>.

12975, “Protection of Human Research Subjects and Creation of National Bioethics Advisory Commission,” October 3, 1995, at <http://www.gpo.gov/fdsys/pkg/FR-1995-10-05/pdf/95-24921.pdf>.

12989, “Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Naturalization Act Provisions,” February 15, 1996, at <http://www.nacua.org/documents/eo12989.pdf>.

13423, “Strengthening Federal Environmental, Energy, and Transportation Management,” January 18, 2007, at <http://www.gpo.gov/fdsys/pkg/FR-2007-01-26/pdf/07-374.pdf>.

13514, “Federal Leadership in Environmental, Energy and Economic Performance,” October 5, 2009, at <http://www.gpo.gov/fdsys/pkg/FR-2009-10-08/pdf/E9-24518.pdf>.

13589, “Promoting Efficient Spending,” November 9, 2011, at <http://www.gpo.gov/fdsys/pkg/FR-2011-11-15/pdf/2011-29683.pdf>.

Nuclear Regulatory Commission

“Green Purchasing Plan,” September 2012 ([ML12191A130](#)).

Management Directive—

- 2.6, “Information Technology Infrastructure.”
- 2.7, “Personal Use of Information Technology.”
- 2.8, “Project Management Methodology.”
- 3.2, “Privacy Act.”
- 3.53, “NRC Records and Document Management Program.”
- 3.7, “NUREG-Series Publications.”
- 4.2, “Administrative Control of Funds.”
- 9.17, “Organization and Functions, Office of the Executive Director for Operations.”
- 10.6, “Use of Consultants and Experts.”
- 10.159, “The NRC Differing Professional Opinions Program.”
- 10.77, “Employee Training and Development.”
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EXECUTIVE SUMMARY

Management Directive (MD) and Handbook 11.1 are being revised to provide general policy guidance for commercial and non-commercial acquisitions. This revision—

1. Incorporates current policies, standards, and procedures.
2. Deletes information in the MD and handbook that essentially duplicates information contained in the Federal Acquisition Regulation (FAR) or Nuclear Regulatory Commission Acquisition Regulation (NRCAR). Information contained in or changes made thereto in the MD and handbook do not in any way make regulatory changes to the NRCAR or FAR.
3. Removes the exhibits from the handbook that are outdated or have been relocated and are available electronically.
4. Addresses recommendations resulting from OIG Audit Report OIG-12-A-02, “Independent Evaluation of the U.S. Nuclear Regulatory Commission’s Contract Award Process,” and OIG Audit Report OIG-12-A-18, “Audit of NRC’s Contract Administration of the EPM Contract.”

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I. INTRODUCTION

A. General

1. This handbook provides procedures and guidance for the U.S. Nuclear Regulatory Commission's acquisition of supplies and services from commercial firms, nonprofit organizations, universities, States, and other Federal agencies. These supplies and services are acquired in a wide range of administrative, technical assistance, and research areas to support of NRC programs. Section I.B of this handbook outlines NRC roles and responsibilities during the procurement process
2. The Federal Acquisition Regulation (FAR) establishes uniform policies and procedures for the acquisition of supplies and services by all executive agencies. It is the highest-ranking regulatory document and takes precedence over the NRC Acquisition Regulations (NRCAR) and this handbook. If there is a discrepancy between the FAR, NRCAR, or this handbook, the FAR takes precedence, except in the area of organizational conflict of interest (OCOI) matters where the NRCAR controls.

B. Overview of the U.S. Nuclear Regulatory Commission (NRC) Procurement Program

1. Management Directive (MD) 11.1 provides an overview of the NRC procurement program. Additional important information about NRC's procurement program can be found on the NRC's external Web site at <http://www.nrc.gov/about-nrc/contracting.html>. Available information includes NRC's business forecast, acquisition documents, and small business information, including links and tips for conducting business with the NRC and quarterly business seminars.
2. The timely, efficient, and successful procurement of goods and services begins each fiscal year (FY) with the development of an advance procurement plan (APP). Each NRC office contributes to the development of the APP by identifying the need for new procurement actions which are subsequently submitted to the Acquisition Management Division (AMD), Office of Administration (ADM) (hereinafter "AMD") in the form of requisitions.
3. AMD has the lead for the APP process and conducts the procurements. The APP—
 - (a) Provides an overview of all procurement actions anticipated for the ensuing FY.
 - (b) Provides the requirement or requisition office a prospective for when funds will need to be committed.
 - (c) Helps AMD ensure timely awards by enabling an efficient distribution of procurement actions and workload to procurement personnel.
4. AMD and the requirement office (also referred to as "requisition office") should communicate to further develop the APP. A contract specialist (CS), representing the contracting officer (CO) on daily procurement matters, will be assigned by the AMD branch chief to a procurement as early as possible to work proactively with the contracting officer's representative (COR). The COR is a representative of the requirement office for preaward matters and may be officially delegated to perform contract administration duties during postaward contract administration. The CS forwards a copy of the requisition to the Small Business Program (SBP), Small Business and Civil Rights (SBCR) (hereinafter SBP). SBP will provide recommendations to the CS for possible full or partial small business set-asides or small business subcontracting percentages for contracts exceeding the dollar threshold established at FAR 19.702, "Statutory requirements." SBP serves as a general resource to the requirement office or COR in identifying possible small businesses for procurements.
5. For each requisition, the COR will ensure a complete and accurate package. The package will include, at a minimum, a complete and accurate statement of work (SOW), independent Government cost estimate (IGCE), a market research memorandum documenting requirement office search process and findings, a list of suggested sources or vendors, as appropriate, suggested evaluation factors/criteria,

- completed security form(s), a list of Government-furnished property (GFP), justifications, and other approvals. Please refer to specific agency guidance or checklist in the NRC Enterprise Acquisition Toolset (NEAT), at <http://neat.nrc.gov>, for more details on requisition package requirements and approvals. Before submission of a requisition, the COR will ensure that funds are available and all necessary approvals are received. When AMD receives a requisition for a procurement, the appropriate COR and the responsible CS will discuss and mutually agree on the acquisition strategy. Required justifications are finalized and submitted for review and approval, including to the Competition Advocate (CA) for actions exceeding the dollar threshold at FAR 6.304(a)(2).
6. For upcoming and follow-on contract requirements, the requirement office should submit requisitions to AMD sufficiently in advance to allow for completion of the procurement process and develop realistic, agreed upon contract milestones based on agency procurement acquisition lead time (PALT). A copy of the PALT standards can be accessed in the NEAT Libraries, at <http://neat.nrc.gov/Libraries/Default.aspx>. There should be adequate transitioning between the incumbent and the successful contractor and award of a contract before the scheduled expiration date of the current contract. Early award of a contract before the required start date will lessen the likelihood of a disruption in service and the need for a noncompetitive extension. Attentive project management during the contract period is also important, including oversight efforts that can be mutually beneficial to the contractor and the agency by lessening the possibility of costly performance problems and cost overruns.
 7. Good management practices require ongoing and final evaluations of the contract effort, including an assessment and formal evaluation of the contractor's performance. The NRC conducts ongoing customer surveys and internal reviews to identify improvements to the procurement program.
 8. The term "requisition" is used generically throughout this handbook to indicate a procurement request and is synonymous with the term "request for procurement action."
 9. The term "requirement office" (also referred to as "requisition office") is an NRC office that submits a requisition to AMD. In the context of this handbook, the terms "requirement office," "requisition office," and "requesting office" are used synonymously to represent the office initiating a formal requisition to AMD for initiation of a procurement action.

C. Sources of Information

1. Forms, Templates, Checklists, and Other Documents
 - (a) Forms mentioned in this handbook are available at the NRC Forms Library on the NRC intranet, at <http://fusion.nrc.gov/nrcformsportal/default.aspx>.

(b) Sources of information, including templates, are available in the NEAT Libraries. Additional procurement information is on NRC's external Web site at <http://www.nrc.gov/about-nrc/contracting.html>.

2. Primary Sources

(a) The FAR is the primary source referenced and is available at <http://www.acquisition.gov/far>.

(b) The NRCAR (48 CFR Chapter 20) implements and supplements the FAR and is available at <http://www.nrc.gov/about-nrc/contracting/48cfr-ch20.html>. If a topic discussed in this handbook appears to conflict with the FAR or the NRCAR, the requirements of the NRCAR and the FAR will prevail.

3. Secondary Sources

(a) The NRC Purchase Card Handbook implements the General Services Administration (GSA) SmartPay@2 Program, and is available at <https://adamsxt.nrc.gov/WorkplaceXT/getContent?id=current&vsId=%7B4E7FC83B-3EAC-4141-92D7-46DF0956BB1B%7D&objectStoreName=Main...Library&objectType=document>.

(b) The "Acquisition Guidebook for Contracting Officer's Representatives" is available in the NEAT Libraries.

II. PRINCIPLES OF GOVERNMENT CONTRACTING

A. Statutory and Regulatory References (Historic Background)

1. The FAR, originally effective April 1, 1984, is the primary regulation required for use by Federal agencies in their acquisition of supplies and services with appropriated funds.
2. The Competition in Contracting Act of 1984 (CICA) extensively changed the Federal Property and Administrative Services Act of 1949, which is the procurement statute for the NRC and most civilian Federal agencies. The changes affected all solicitations issued after March 31, 1985. The CICA requires the use of competitive procedures to obtain full and open competition and stringent restrictions limiting the use of noncompetitive procedures (other than full and open competition).
3. On May 16, 1989, amendments to the Office of Federal Procurement Policy Act placed new requirements and restrictions on Federal employees involved in the Federal commercial procurement process. This law specifically defines the procurement process. It also places prohibitions on Federal employees, private firms, and individuals against knowingly discussing, offering, or accepting anything of value, including job offers, while participating in the procurement process.

4. The NRC issued the NRCAR to implement and supplement the FAR. The NRCAR became effective on January 22, 1993. Ten years after CICA brought significant changes to procurement, the Federal Acquisition Streamlining Act of 1994 significantly changed certain laws affecting the procurement process. It established a category for micro-purchases, set the framework for simplified acquisition procedures, promoted electronic commerce, established a procedure for multiple awards from one solicitation, and promoted contracting for commercial items. The Federal Acquisition Reform Act of 1996 affected the approach to several areas of procurement, including competition, purchase of commercial items, and certifications. The Information Technology Management Reform Act of 1996, which repealed the Brooks Act, assigned responsibilities to the Office of Management and Budget (OMB) and revised FAR Part 15 to implement streamlining initiatives covering acquisition techniques, source selection, and competitive range determinations.
5. The NRC has a long-standing practice of conducting its activities in an open and transparent manner, consistent with the NRC's Open Government Plan (<http://www.nrc.gov/public-involve/open/philosophy/nrc-open-gov-plan.pdf>), OMB's Open Government Directive, and the Data Quality Act. The NRC reports all contracts and financial assistance obligations to USASpending.gov on a monthly basis, in accordance with OMB Memorandum 09-19, "Guidance on Data Submission under the Federal Funding Accountability and Transparency Act (FFATA)," dated June 1, 2009.

B. Contract Law

1. A contract is an agreement between two or more parties in which there is a promise to do something in return for a valuable benefit (i.e., consideration). A valid and binding contract requires the following:
 - (a) Offer (A party must offer to enter into a contract and make an offer to another party.);
 - (b) Acceptance (Another party must accept the terms of the offer.);
 - (c) Consideration (Something of value offered by one party to another.);
 - (d) Capacity of the parties (Both parties must be of sound mind and legal age to enter into a contract.); and
 - (e) Legality (The contract's purpose must be to accomplish a goal that is legal.).
2. A carefully prepared contract can eliminate misunderstanding after the contract has been signed. Loosely written requirements, ambiguous clauses, unreasonable performance schedules, and inaccurate or faulty specifications or requirements can create serious problems for timely receipt of quality goods or services. The problems include deficient contract deliverables or products or services provided at an unreasonable cost.

3. The courts have taken the approach that individuals who enter into valid contracts are duly bound to live up to their promises and are expected to make every effort to conform to their contractual obligations, including contracts entered into by the Federal Government.
4. Please refer to the “Acquisition Guidebook for Contracting Officer’s Representatives” for preaward and postaward matters, including legal issues pertaining to contract changes and disputes.

C. Basic Contracting Principles

1. Promote full and open competitive to the maximum extent possible.
 - (a) Using full and open competition allows market forces to influence contract pricing, terms, and conditions, typically yielding lower prices and more favorable results than operating in a sole source environment.
 - (b) Using full and open competition also allows all qualified vendors an equal and fair opportunity to compete for Government requirements.
2. Award contracts only to those vendors who are “responsive” and “responsible.”
 - (a) Responsive means the vendor must submit a bid or proposal that complies with all Government solicitation requirements.
 - (b) Responsible means the vendor must meet the conditions set forth in FAR 9.104.
3. Select the contract type that is most appropriate for Government requirement. The type of contract used must coincide with the specific nature and circumstances of the procurement and address the degree of risk exposure the Government is willing to accept.
4. The NRC procurement program implements various national, social, and economic policies. Examples include, but are not limited to—
 - (a) SBPs, including small business set-asides and sole source procurements (FAR Part 19),
 - (b) Addressing Section 508 (Rehabilitation Act) accessibility standards (FAR 39.2), and
 - (c) Adherence to Federal and State environmental laws and regulations (FAR Part 23).

D. The Privacy Act

1. The Privacy Act of 1974, as amended (5 U.S.C. 552a), requires safeguards for the protection of records on individuals that the Federal Government collects, maintains, and uses. The Privacy Act is applicable when information about individuals can be

- retrieved from agency records by a personal identifier (name, social security number, or case number assigned to the individual).
2. The purpose of the Privacy Act is to balance the Government's need to maintain information about individuals with the rights of individuals to be protected against invasions of their privacy. The provisions under MD 3.2, "Privacy Act," also apply to a duplicate system of records, which may be copies of agency records or similar to records contained in an NRC system of records. A duplicate system of records does not need to contain all of the records contained in the primary system.
 3. Contracts must include information that explains when a contract requires NRC contractors and/or subcontractors (and their employees) to maintain or have access to a system of records or a duplicate system of records that contain personal information about individuals and from which personal information can be retrieved by reference to an individual identifier (e.g., name, social security number). The CS will ensure that the Privacy Act clauses of the FAR are incorporated into the solicitation by reference.
 4. Examples of agency functions that may require the contractor to maintain a system of records on individuals are—
 - (a) Time and attendance records (records include name and social security number);
 - (b) Travel records (records include name and social security number);
 - (c) Parking permit records (records include the applicant's name, address, telephone number, and vehicle information);
 - (d) Drug testing program records (records include results of initial, confirmatory, and followup testing);
 - (e) Facility security access control records (records include an individual's name, social security number, badge number, and digital image); and
 - (f) Employee health/fitness center records (records include an individual's name, date of birth, social security number, and medical history).
 5. Common duplicate systems of records include time and attendance records and travel records.

E. Drug-Free Workplace

The NRC will deem any offer unqualified for award unless the offeror has certified that it is a drug-free workplace. After contract award, if there is adequate evidence to suspect that the contractor submitted a false certification or failed to comply with the certification, the NRC may suspend payments, terminate the contract for default, debar or suspend the contractor, or take other appropriate action as deemed necessary by the agency.

F. Suspension and Debarment

1. Suspension and debarment actions prevent companies and individuals from participating in Government contracts, subcontracts, and other contractual relationships with any Federal agency for acts identified below.
2. Grounds for suspension and debarment include the following:
 - (a) Commission of fraud or a criminal offense concerning obtaining, attempting to obtain, or performing a public contract or subcontract;
 - (b) Violation of Federal or State antitrust statutes relating to the submission of offers;
 - (c) Commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
 - (d) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas;
 - (e) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, including—
 - (i) Willful failure to perform under the terms of one or more contracts; or
 - (ii) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.
 - (f) Violation of the Drug-Free Workplace Act of 1988;
 - (g) Commission of an unfair trade practice;
 - (h) Delinquent Federal taxes that exceed the micro-purchase threshold;
 - (i) Knowing failure by a principal, until 3 years after final payment on any Government contract award to the contractor, to timely disclose to the Government, concerning the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of—
 - (i) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations in Title 18 of the United States Code (U.S.C.);
 - (ii) Violation of the False Claims Act (31 U.S.C. 3720-3733); or
 - (iii) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in FAR 32.001.

- (j) Noncompliance with Executive Order (E.O.) 12989, “Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Naturalization Act Provisions”; or
 - (k) Any other cause so serious or compelling in nature that it affects the present responsibility of a Government contractor or subcontractor.
3. Suspended or debarred contractors are listed as part of the “System for Acquisition Management” (SAM) database, which incorporates the information formerly included on the “List of Parties Excluded from Federal Procurement and Nonprocurement Programs,” available at www.sam.gov/portal/public/SAM/.
 4. Federal agencies seeking to debar or suspend a contractor must give notice to the contractor of the reasons for the proposed action. The contractor has 30 days to respond. Generally, suspension does not exceed 18 months. The Government is precluded from soliciting offers from, awarding contracts to, or consenting to subcontracts with suspended or debarred contractors. (See FAR Subpart 9.4 – Debarment, Suspension, and Ineligibility.)

III. PROCUREMENT ROLES AND RESPONSIBILITIES

A. Portfolio Council (PC)

1. A Portfolio Council (PC) reviews and analyzes the agency’s spending and recommends the use of enterprisewide contract (EWC) vehicles to enhance the agency’s ability to capture savings and other efficiencies. A PC engages in activities including agency spending analysis (i.e., data trending), EWC development, strategic sourcing, leveraging agency buying power, and alignment of the strategic acquisition process with the budget formulation process.
2. A PC is a cross-functional team responsible for centralized acquisition planning, strategic sourcing development, budget alignment, and monitoring agency spending. PC membership includes representatives from stakeholder program offices, Office of the General Counsel (OGC), the Office of the Chief Financial Officer (OCFO), ADM, SBP, and, as appropriate, a representative from the Office of Nuclear Material Safety and Safeguards to represent the Center for Nuclear Waste Regulatory Analyses (CNWRA).
3. A PC provides a platform to drive efficiencies in agency spending. Anticipated benefits include (a) helping achieve cost savings by leveraging buying power, (b) eliminating process inefficiencies and streamlining buying power, and (c) enabling cross-program office requirements development, decisions, and prioritization.
4. The procurement function can only be successful through collaboration and recognition by parties that the process is interdependent. The NRC’s acquisition

environment is transitioning from “buying” to “commodity management” as a result of strategic acquisition. While “buying” is office-centric and transaction-oriented, “commodity management” focuses on developing a strategy to manage the acquisition for a specific class of commodities agencywide. It promotes collaboration between various stakeholders to maximize savings or efficiencies through use of EWCs. Enhanced collaboration is the key to capturing economies of scale and leveraging the agency’s buying power in the future. Centralizing all procurement activities into a PC provides the agency with valuable opportunities for capturing efficiencies through standardization of processes, combining resources, and collaborative relationships to establish work priorities to accomplish the agency’s mission.

5. A PC supports the NRC’s strategic planning goals by providing active management of strategic acquisition planning and oversight of the acquisition of specific categories of goods and services (referred to hereafter as commodities). A PC supports OMB’s initiative for strategic sourcing by engaging in planning for the agency’s enterprise contracts.
6. A PC increases the effectiveness of NRC’s efforts to meet the current Administration’s goal (OMB Memorandum M-13-02, “Improving Acquisition through Strategic Sourcing,” dated December 5, 2012) to ensure that agencies manage their acquisitions effectively, eliminate inefficiencies, use Governmentwide and agencywide strategic sourcing solutions to the extent appropriate, and seek to increase participation by small businesses.
7. The goals of PCs are to (1) ensure more robust competition, fewer sole source and high-risk contracts, and more effective procurement practices Federal-wide; and (2) obtain the expected quality of services and products on schedule and at reasonable prices.
8. Key objectives are—
 - (a) Apply an enterprisewide approach to acquisition planning and execution.
 - (b) Align budget formulation and execution.
 - (c) Comply with small business laws, mitigate the impact of justified contract bundling, and provide the maximum practicable prime and subcontract opportunities for small business.
 - (d) Prioritize implementation for strategic sourcing vehicles.
 - (e) Improve commitment, obligation, and expenditure of funds as the result of reduced procurement cycle times during the budget execution year.
 - (f) Eliminate redundancies among NRC offices buying similar commodities.

- (g) Implement streamlined processes with an enterprise approach to meeting programmatic requirements.
- (h) Provide robust reporting on NRC-wide acquisition performance, including tracking savings and spending for commodity initiatives on contracts.

B. Contracting Officer's Representative (COR)

1. The role of COR is used generically throughout this handbook when referring to preaward activities performed by NRC officials and does not constitute an official CO delegation. When a contract or order is awarded, the CO issues a written delegation letter to the COR, officially authorizing that individual to perform specific technical or administrative functions during postaward contract administration. To perform postaward contract activities, a COR must have a formal delegation issued by a CO and be certified as a Federal Acquisition Certification for Contracting Officer Representative (FAC-COR). The COR essentially serves as the CO's technical expert and advisor on the contract and monitors and evaluates contractor performance. (See FAR 2.101.)
2. The COR should be knowledgeable in postaward contract administration matters, including monitoring and evaluating contractor performance. Before performing postaward contract administration, the COR must complete mandatory contract administration training courses for FAC-COR certification.
3. See OMB Memorandum, "Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR)," dated September 6, 2011, available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/revisions-to-the-federal-acquisition-certification-for-contracting-officers-representatives.pdf>.
4. Generally, the COR will communicate procurement matters with the CS as appropriate. The general duties normally initiated or performed by the COR include, but are not limited to the following:

(a) Procurement Planning Phase

From the time an NRC office decides that a contract should be placed to meet the NRC's needs until the requisition is sent to AMD, it is critical to have adequate planning and coordination among staff. The following duties and responsibilities of the COR include, but are not limited to:

- (i) Reviewing unsolicited proposals and advising whether offered products or services are innovative and unique. (See FAR Part 15.603.)
- (ii) Developing the APP for office director (OD) approval and obtaining organizational approval, including budget approval, for the project.

- (iii) Determining whether the requirement meets a direct Government need (i.e., contract) or if the purpose is to serve as a benefit to the general public (i.e., grant or cooperative agreement). (See MD 11.6, “Financial Assistance Program.”)
- (iv) Conducting preliminary market research, in conjunction with the CS, to determine whether the agency need can be met by items or services available in the commercial marketplace or more appropriately acquired through interagency agreements with other Federal agencies or Department of Energy (DOE) laboratories not covered by MD 11.1. (See MD 11.7, “NRC Procedures for Placement and Monitoring of Work With the U.S. Department of Energy (DOE),” and MD 11.8, “NRC Procedures for Placement and Monitoring of Work with Federal Agencies Other Than the U.S. Department of Energy (DOE).”)
- (v) Assisting the CO in developing an acquisition strategy, including consideration of green purchasing requirements and Section 508 standards for electronic and information technology (EIT) products or services.
- (vi) Preparing and submitting the SOW, performance work statement (PWS), or statement of objectives (SOO) for new requirements and any necessary modifications to existing projects that change the scope of work and obtaining organizational approval, including budget approvals for the project. Also preparing any justification or background information necessary to support the requirement. Note: It is the preference of the U.S. Government to structure work statements using performance-based methods and techniques. Consider small business usage and consult with the CS and SBP on possible 8(a) or Historically Underutilized Business (HUB)Zone sole source (if only one HUBZone firm exists) or small business set-aside programs and small business subcontracting opportunities.
- (vii) Preparing documentation for EIT acquisitions under agency procedures, in conjunction with the Office Information System Security Officer (ISSO).
- (viii) Preparing and submitting an IGCE, available in the NEAT Libraries, for any contract requirement, including any individual task, delivery, purchase order, or other modification in excess of the micro-purchase threshold.
- (ix) Drafting and obtaining signed/approved justifications.
- (x) Drafting and obtaining required approvals, including using classified material for a project. In this regard, the COR refers to the National Industrial Security Program Operating Manual, which contains the U.S. Government policy on the protection of classified information at industrial facilities, including contractors that use, process, or store classified information in the

performance of a contract with the Government. (See agency requirements in Section VI.H of this handbook.)

- (xi) Initiating the Strategic Source Group (SSG) process for procurement actions exceeding the requirement threshold amount.
- (xii) Developing and submitting a GFP list with the NRC Property Management Officer, Property and Labor Services Branch, Associate Directorate for Space Planning and Consolidation (ADSC), ADM. (See MD 13.1, "Property Management.")
- (xiii) Preparing and submitting NRC Form 187, "Contract Security and/or Classification Requirements," for the signature of the OD for any work requiring a contractor's access to classified or sensitive unclassified information or processing sensitive EIT systems or information. (See MD 12.3, "NRC Personnel Security Program.")
- (xiv) Developing and submitting the requisition, including any supporting documentation, to AMD.
- (xv) Providing suggested evaluation criteria.
- (xvi) Discussing with the CS the most appropriate manner to evaluate proposals, including use of numerical weights or adjectival ratings.
- (xvii) Providing a source list of potential vendors.
- (xviii) Forwarding source evaluation panel (SEP) nominations (names and contact information) provided by the designating official (DO).
- (xix) Providing input into the appropriate contract type, as necessary.
- (xx) Preparing an SSG form for approval if the procurement action is estimated above the dollar threshold amount indicated in the SSG guidelines.
- (xxi) Developing a milestone schedule in collaboration with the CS.
- (xxii) Evaluating responses to a sources-sought notice, when used, and determining the qualification of the organization(s) to perform the work.
- (xxiii) Assisting the CS in drafting FedBizopps (FBO) notices.
- (xxiv) Participating in any preproposal conference.
- (xxv) Assisting the CS in developing Request for Quotations (RFQ) and Request for Proposals (RFP).
- (xxvi) Reviewing, as the SEP chairperson or member, each proposal against the evaluation criteria addressed in the solicitation. Determines strengths, weakness, significant weakness, and deficiencies. Identifies any potential for OCOI, after consulting with OGC and AMD, as appropriate. The NRC will

resolve OCOI issues on a case-by-case basis, and when necessary to further the interests of the agency, will waive or mitigate the conflict at its discretion. Documents evaluation results on the individual evaluation worksheets and prepares an evaluation report.

- (xxvii) Developing, for negotiation purposes and by the proposal evaluation, technical questions or requests for clarification that address specific proposal weaknesses, significant weaknesses, or deficiencies.
- (xxviii) Preparing a final evaluation report, if discussions are held, which includes revised individual evaluation worksheets and recommending an offeror (contractor) for award.
- (xxix) Assisting the CS in developing purchase orders, task or delivery orders, and contracts.
- (xxx) Participating in pre-award debriefings for offerors excluded from the competitive range, as applicable.

(b) Contract Performance Phase

- (i) Once a contract or order is awarded, the COR is issued a formal written delegation letter by the CO to perform specific technical or administration functions during postaward contract administration. The COR functions as the primary point of contact with the contractor on all technical matters, provides technical direction to the contractor, monitors costs, inspects and accepts deliverables, reports to the CS on matters of contractor performance, reviews vendor invoices, and makes recommendation for payment to the CS.
- (ii) The duties and responsibilities of a COR include, but are not limited to:
 - Participating in post-award debriefings for unsuccessful offerors.
 - Chairing postaward kickoff meetings with the successful contractor, in coordination with the CS, the CO, security office representative, and other agency stakeholders.
 - Ensuring that the contractor obtains security badges for onsite personnel.
 - Monitoring performance and costs under the contractor spending plan and notifying the CS if there is a deviation in spending.
 - Reviewing all contractor costs reported on vouchers compared with contractor performance during the period and costs reported in Monthly Letter Status Reports (MLSR), including contractor spending plans applicable to cost-reimbursement contracts and task orders.
 - Analyzing and comparing reported costs and spending plan updates against technical progress.

- Ensuring that expenditures are reasonable and within the scope for the level of technical effort expended, including any travel reported during the period.
- Evaluating the impact of performance problems on cost and schedule, and recommending additional funding or a reduction in the effort to stay within costs.
- Taking aggressive action to avoid schedule slippages, overruns, and delays.
- Advising the CS of appropriate action in case of schedule slippage or funding problems, including suspension or disallowance of payment for supplies and services required under the contract, a stop-work order, or termination of a project.
- Monitoring and auditing the use of GFP and contractor-acquired equipment.
- Ensuring that the contractor complies with the SOW. This means the COR confirms delivery schedules are met, ensures problems are addressed and solved expeditiously, ensures the contractor's expenditures remain within the estimated cost, and recommends modification(s) to the contract, as necessary.
- Determining whether contract deliverables meet technical and performance standards and specifications.
- Serving as technical liaison between the Government and contractor.
- Providing technical direction and guidance to the contractor.
- Issuing technical direction in writing or confirming verbal direction and guidance to the contractor in writing. The COR shares important correspondence that may affect the terms and conditions of the contract with the CS for review and retention in the official contract file. Technical direction must be within the general SOW stated in the contract. Technical direction includes (1) directing the contractor to shift work priorities, authorizing unanticipated travel, filling in details, or clarifying terms in the SOW; (2) advising and guiding the contractor in the preparation of drawings, specifications, or technical portions of the work description; and (3) reviewing and, where required by the contract, approving technical reports, drawings, specifications, and technical information delivered by the contractor to the NRC.
- Ensuring that the CS is apprised of any substantive day-to-day discussions, technical meetings with the contractor are documented, and

a copy of the documentation is provided to the CS for review and placement in the AMD official contract file.

- Providing input on interim and final evaluations of contractor performance during the contract.
- Notifying the Division of Facilities and Security (DFS), ADM, immediately by e-mail whenever a contractor employee's access to NRC facilities, the NRC local area network (LAN), and/or information systems is no longer required and should be terminated. (See MD 12.3.)

(iii) The COR does not have the authority to and may not issue any technical direction that—

- Constitutes an assignment of work outside the general scope of the contract or a change as defined in the “Changes” clause of the contract.
- Creates or authorizes an obligation in excess of funds available.
- Causes an increase or a decrease in the total estimated contract cost, fixed-fee, if any, or the time required for contract performance.
- Changes any of the expressed terms, conditions, or specifications of the contract.
- Ends the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatsoever.

(c) Work Completion and Contract Closeout Phase

Duties and responsibilities of a COR during contract closeout include, but are not limited to:

- (i) Submitting a requisition to AMD to initiate the contract closeout process.
- (ii) Approving final acceptance of the contractor's deliverables and services for technical sufficiency.
- (iii) Completing a final written evaluation of the contractor's performance on the project.
- (iv) Ensuring that interim and final technical reports and any other appropriate deliverables are submitted as required by the contract and following up to determine that the documents have been entered in the Agencywide Documents Access and Management System (ADAMS). (See MD 3.53, “NRC Records and Document Management Program.”)
- (v) Contacting AMD to request early deobligation of unexpended funds and completing an early deobligation form for submission to OCFO.

- (vi) Responding to AMD on any closeout matters, including property disposition and logistics or other contractual issues.
- (vii) Advising DFS in writing when all work and services have been completed so that the contractor employee's access to NRC facilities, the NRC LAN, and/or information systems may be ended.

C. Contract Specialist (CS)

The CS supports the CO and performs a wide array of preaward and postaward functions. The CS is a member of the acquisition team responsible for ensuring compliance with Federal and State laws, Executive orders (E.O.s), regulations, policies, and NRC procedures during the conduct of procurement processes. Generally, the CS will communicate procurement matters with the COR and the CO, as appropriate. Duties and responsibilities of the CS include, but are not limited to the following:

1. Procurement Planning Phase

The CS will coordinate with the requirement office to ensure completion of requirement package documents. Specifically, the CS is responsible for—

- (a) Supporting PCs activities, including spend analysis, requirements analysis, strategy development, and executing and monitoring strategic sourcing vehicles.
- (b) Reviewing and commenting on SSG forms and consulting with the CO.
- (c) Conducting market research in conjunction with the COR to determine if agency needs can be met by items or services available in the commercial marketplace.
- (d) Developing and revising milestone schedules in coordination with the COR.
- (e) Attending SEP meetings and participating as a non-voting member of the panel during technical evaluations or deliberations, as appropriate.
- (f) Using the agency's contract writing system to generate solicitations and contract/order award documents under agency policies and procedures.
- (g) Issuing approved notices and solicitations in FBO.
- (h) Coordinating pre-award issues with NRC offices and the CO on issues raised by potential offerors and interested parties regarding solicitations.
- (i) Conducting responsibility checks for offerors. (See FAR Part 9.)
- (j) Conducting cost/price analysis of offerors' cost/price proposals (including cost realism, as applicable), with technical input from the SEP, as necessary.

- (k) Conducting negotiations with potential offerors and preparing correspondence and backup documentation for contract award, including the summary of negotiations for CO review and approval.
 - (l) Ensuring all requirements of the FAR are met, including Defense Contract Audit Agency (DCAA) audits, Department of Labor (DOL) wage determinations, Equal Employment Opportunity reviews, and U.S. Small Business Administration (SBA) approvals.
 - (m) Ensuring all requirements of the NRCAR are met, including technical approvals and OCOI approvals.
 - (n) Forwarding a copy of all contract audit requests to Office of the Inspector General (OIG).
 - (o) Reviewing SAM, which includes the Central Contractor Registration, Online Representations and Certifications Application, and Excluded Parties List System. (See the NEAT Libraries.)
 - (p) Ensuring that offerors are not suspended or debarred.
 - (q) Preparing and providing OGC documentation in support of the agency's position when a protest is filed against an agency procurement action.
 - (r) Coordinating with OGC to ensure there is no legal objection to contractual-related documents under agency policy and procedures.
 - (s) Facilitating review of contract file documentation for AMD peer review.
 - (t) Supporting the CO and OGC with pre-award protests, and facilitating corrective action, as necessary.
 - (u) Coordinating and attending contractor pre-award debriefings and documents proceedings.
2. Contract Performance Phase
- During this phase, the CS is responsible for—
- (a) Coordinating and attending contractor post-award debriefings and documenting formal or informal proceedings.
 - (b) Preparing and attending contractor postaward kickoff meetings with successful contractors, in collaboration with the COR.
 - (c) Preparing both unilateral (signed by the CO only) and bilateral (signed by the CO and contractor) modifications initiated by the requirement office for CO signature.

- (d) Obtaining all necessary administrative approvals and clearances (e.g., justification for other than full and open competition (JOFOC)) related to the performance of the identified contract administration functions.
- (e) Preparing all required determination and findings (D&F) for the CO's signature, as well as findings of fact and decisions under the disputes clause.
- (f) Negotiating and recommending awards of task or delivery orders within contract ordering limitations.
- (g) Reviewing all contractor requests for payments and recommending approval, suspension of costs, or disallowance to the CO.
- (h) Ensuring resolution of payment problems with NRC offices and OCFO, in consultation with the COR.
- (i) Reviewing annual cost audits by contractors having cost-reimbursement contracts, as found in FAR Part 42 and NRCAR Part 2042, as well as annual indirect rate audits performed on cost-reimbursement contracts.
- (j) Providing a copy of all contract audit reports to OIG.
- (k) Monitoring MLSRs, Contractor Spending Plans (CSP), and contractor vouchers, in consultation with the COR.
- (l) Advising the CO of contractor performance problems, including anticipated overruns and underruns of the estimated cost on cost-type contracts.
- (m) Monitoring the COR's technical direction to ensure consistency with delegated authority.
- (n) Recommending to the CO for approval or disapproval contract actions, including, but not limited to, overtime, travel, key personnel, subcontract consent, and equipment purchases.
- (o) Recommending action to the CO for lost or damaged GFP by the contractor.
- (p) Recommending action to the CO for liquidated damages to address contractor delays.
- (q) Recommending appropriate remedies to the CO for cost or price deductions or other recourse for submission of deficient goods or services and for other forms of contract breaches under the contract and FAR.
- (r) Monitoring and advising the CO of contractor progress in meeting prescribed delivery dates of contract deliverables or reports.
- (s) Coordinating the procedures for control of Government property provided to contractors with the NRC Property Management Officer, PLSB, ADSC, ADM; and

recommending action to be taken in case of loss, damage, or destruction of Government property, as well as delay in delivery or completion of performance under contracts.

- (t) Evaluating and advising the CO of the contractor's progress toward delivery of required contract items through a review of contractor MLSR progress report, subcontracting plan reports, correspondence, contact with the COR, conferences, visits to the contractor's site, and so forth.
 - (u) Ensuring timely submission of reports required by clauses or provisions of the contract other than the SOW.
 - (v) Monitoring contractor compliance with established small business subcontracting plans to ensure contractor compliance in using best efforts to achieve small business goals.
 - (w) Reviewing and updating subcontractor information in the Electronic Subcontracting Reporting System at www.esrs.gov.
 - (x) Monitoring the contractor's adherence to NRC's conflict of interest requirements and security regulations.
 - (y) Recommending agency positions to the CO in response to contractor claims.
 - (z) Advising the CO of suspected fraud cases or possible procurement integrity violations.
 - (aa) Facilitating contractor past performance evaluations during postaward contract administration using Contractor Performance Assessment Reports (CPARS) for storage in the Past Performance Information Retrieval System (PPIRS), available at <http://www.ppirs.gov/>. PPIRS is a Federal database that consists of three components: Report Card, Statistical Reporting, and Federal Awardee Performance and Integrity Information System (FAPIS). FAPIS is used by CSs when drafting award and responsibility determinations. These three components support the FAR requirement to consider past performance information included in FAR Parts 9, 13, 15, 36, and 42), available at <http://www.fapis.gov/fapis/index.jsp>.
 - (bb) Supporting the CO with any other contract administration function.
3. Work Completion and Contract Closeout Phase
- (a) After the COR initiates a requisition for contract closeout, the CS performs actions to administratively close out contracts under FAR 4.804 and 42.708, including reconciling costs, performing property utilization screening, and authorizing the deobligation of unliquidated obligations. Within 90 days of identifying the availability of funds, the CO deobligates any unliquidated

obligations (excess funds) remaining in the contract and not needed for outstanding contractor costs or audits, and subsequently requests the closeout and performance documentation required by AMD guidelines.

(b) The CS is responsible for—

- (i) Preparing files for firm-fixed-price contracts, other than those using simplified acquisition procedures, for closeout from verification of physical completion.
- (ii) Preparing cost-reimbursement contract files requiring final rates from DCAA for closeout verification of physical completion.
- (iii) Preparing all other files for closeout verification of physical completion.

D. Contracting Officer (CO)

1. The CO is an exclusive agent of the NRC who enters into, administers, or terminates contracts, ensuring that all applicable requirements of Federal and State laws, E.O.s, regulations, and other procedures are met before the execution of any contract or any modification of an existing contract.
2. The Director of AMD delegates authority to COs through issuance of warrants (i.e., written delegations). These COs may bind the Government only to the extent and term of their delegated authority. COs are given a Standard Form (SF) 1402, "Certificate of Appointment," available at <http://www.usa-federal-forms.com/usa-fedforms-sf/sf-1402-nonfillable.pdf>, which states any limitations of the scope of their authority. A warranted CO is the only person with formal authority to legally bind the U.S. Government and to enter into, administer, and terminate contracts for the Government. Any Federal employee without this authority who attempts to bind the Government may be held personally responsible for any of his or her actions.
3. COs are responsible for ensuring performance of all necessary actions for effective contracting, compliance with the terms of the contract, and safeguarding the interests of the U.S. Government in its contractual relationships. COs should be allowed wide latitude to exercise business judgment to meet these responsibilities.
4. Duties and responsibilities of a CO include, but are not limited to, the following:
 - (a) Procurement Planning Phase
 - (i) Reviewing APP information and providing feedback to NRC offices on appropriate procurement strategies and streamlining initiatives to ensure the acquisition is achieved efficiently and meets agency needs.
 - (ii) Advising on acquisition strategies and alternatives, including consideration of green purchasing requirements and Section 508 standards for EIT products or services.

- (iii) Reviewing requisitions to ensure accuracy, completeness, and contractibility, and assigning action to a CS to process.
- (iv) Reviewing office requisitions estimated above the dollar threshold amount indicated in SSG guidance before review by the Director of AMD and attending SSG meetings.
- (v) Ensuring that funds provided on the requisition are sufficient.
- (vi) Requesting and considering the advice of specialists in audit, law, engineering, science, administration, transportation, and other fields, as appropriate, when assisting the requirement office with planned acquisitions.
- (vii) Providing advice on who will communicate, and how, with industry.
- (viii) Discussing recommendations with officials (CS, COR, SBP, OGC, SBA, etc.) for small business set-asides and appropriate small business subcontracting opportunities and percentages.
- (ix) Reviewing and considering market research information and reports.
- (x) Promoting full and open competition.
- (xi) Verifying that the planned acquisition is not unduly restrictive.
- (xii) Reviewing and approving (within warrant authority) justifications for specifications or procurement methods that limit competition.
- (xiii) Approving noncompetitive procurements up to the amount specified in his or her CO warrant, and submitting justifications for contract actions above the AMD branch chief's warrant amount to the CA for review and approval.
- (xiv) Reviewing and approving issuance of FBO notices (or other forms of advertising) and solicitations, available at <http://www.fbo.gov>.
- (xv) Amending solicitations.
- (xvi) Conducting pre-proposal conferences.
- (xvii) Reviewing the list of persons nominated by the DO to serve as technical evaluators (i.e., SEP members) for qualifications to evaluate proposals and designating them as formal SEP members.
- (xviii) Briefing the SEP and distributing evaluation worksheets and proposals, providing general guidance, and addressing related concerns or issues.
- (xix) Ensuring that offerors receive impartial, fair, and equitable treatment during the evaluation process and entire procurement.
- (xx) Determining the competitive range after review of the SEP's evaluation report and cost/price analysis performed by the CS.

- (xxi) Reviewing and approving SEP evaluation reports and coordinating any required changes with the chairperson.
 - (xxii) Determining contractor responsibility.
 - (xxiii) Conducting negotiations with responsive and responsible offerors.
 - (xxiv) Referring small business responsibility matters to the SBA for resolution and issuance of a Certificate of Competency (COC), as applicable.
 - (xxv) Reviewing contract files to ensure accuracy and completeness of contract documents.
 - (xxvi) Making source selection decisions and selecting successful offerors (if another source selection authority (SSA) is not designated), after reviewing the SEP's evaluation report (or final evaluation report if discussions were held), in combination with the CS's cost/price evaluation and overall proposal evaluation.
 - (xxvii) Approving letters notifying the successful offeror.
 - (xxviii) Approving letters notifying and debriefing unsuccessful offerors.
- (b) Contract Performance Phase
- (i) Coordinating with SEP chairperson, CS, and OGC on any agency-level or U.S. Government Accountability Office (GAO) protests, and providing OGC with the CO's Statement of Facts.
 - (ii) Delegating certain contract administration functions to a COR and issuing formal delegations of authority to CORs to perform those contract administration responsibilities.
 - (iii) Co-chairing post-award kickoff meetings with the COR.
 - (iv) Ensuring contractor performance and compliance with the terms and conditions of the contract.
 - (v) Safeguarding the interests of the United States in its contractual relationships and interactions.
 - (vi) Modifying contractual instruments.
 - (vii) Engaging the contractor on matters raised under the Disputes Clause.
 - (viii) Settling, by mutual agreement, a decision on a claim.
 - (ix) Preparing a statement of the CO's final decision when a claim by a contractor cannot be agreed upon.

- (x) Submitting D&Fs and making approval recommendations for ratification requests of unauthorized commitments to the Head of Contracting Activity (HCA) (Director of AMD).
- (xi) Approving D&Fs for actions to include exercising options, use of time-and-materials (T&M), labor-hour, or indefinite-delivery contracts (IDCs).
- (xii) Supporting PC activities, including agency spending analysis for contracts, requirements analysis, strategy development, and executing and monitoring of strategic sourcing vehicles.
- (xiii) Making determinations whether a termination of a contract for default or convenience is in the Government's best interest.
- (xiv) Referring suspected fraud to OIG and coordinating disposition. Fraud in the procurement process is prohibited by criminal statutes and administrative regulation. The Inspector General Act vests the OIG with responsibility for prevention and detection of fraud and abuse in agency programs and operations. Investigation of suspected fraud in procurement is within the exclusive authority of the OIG. Allegations of fraud in procurement are to be reported to the OIG in writing or by calling the "hotline" on 1-800-233-3497.
- (xv) Responding to OIG audit recommendations and taking appropriate action(s) to ensure prompt closure.
- (xvi) Awarding contracts and task or delivery orders and executing modifications.
- (xvii) Issuing stop-work orders.
- (xviii) Approving invoices and ensuring resolution of payment problems with NRC offices and OCFO. (This function is typically assigned to the CS.)
- (xix) Approving contractor requests, including, but not limited to, travel approval requests, equipment purchase requests, changes in key personnel, assignment of claims, and novation agreements. In the event foreign travel is required, a copy of the approved NRC Form 445, "Request for Approval of Official Foreign Travel," must be furnished to the CS.
- (xx) Performing other duties and responsibilities as may be prescribed by the FAR.
- (xxi) Assisting in monitoring contractor performance.
- (xxii) Approving contractor performance reports in CPARS or other electronic system.
- (xxiii) Monitoring the accuracy and completeness of contract files during contract administration.

(c) Work Completion and Contract Closeout Phase

- (i) Ensuring orderly and timely closeout of contracts and deobligation of unliquidated obligations not needed for outstanding contractor costs or DCAA audits, in coordination with the CS and COR.
- (ii) Issuing and approving formal disposition instructions to contractors for GFP or contractor-acquired property.

E. Purchasing Agent (PA)

A purchasing agent (PA) is an administrative staff member within a regional office who performs all required actions to obtain a wide variety of supplies, services, materials, and equipment through the use of simplified acquisitions not exceeding the simplified acquisition threshold (SAT) and Federal Supply Schedule (FSS). Duties and responsibilities of the PA, include, but are not limited to:

1. Conducting market research to determine whether agency needs can be met by items or services available in the commercial marketplace.
2. Preparing award and modification documents for the signature of the CO.
3. Modifying simplified acquisitions and, when requested by the COR, helping with performance issues and preparing necessary procurement actions to ensure that acquisitions support the agency needs.
4. Coordinating the procedures for control of GFP with the NRC Property Management Officer, PLSB, ADSC, ADM; and recommending action to be taken in case of loss, damage, or destruction of GFP, as well as delay in delivery or completion of performance.
5. Advising the CO of situations that indicate fraud (18 U.S.C. 207, "Organizational Conflict of Interest").
6. Preparing terminations for convenience or default for review by the CO.
7. Performing all required actions to administratively close out purchase orders and other awards and orders.

F. Designating Official (DO)

1. The DO is an NRC official who approves requests for procurement action within his or her area of responsibility. The DO executes the technical certification required to justify using other than full and open competitive procedures for proposed noncompetitive contract actions and signs requisitions to indicate concurrence on a sole source purchase. The DO nominates (and the CO designates) representatives to serve on an SEP and monitors the overall procurement process.

2. The DO should consider nominating persons who are available to evaluate proposals, do not have a perceived bias, do not have an apparent conflict of interest, and are competent and experienced in the areas to be evaluated.

G. Competition Advocate (CA)

1. The CICA requires that each agency designate a CA. The CA challenges barriers to and promotes full and open competition of the agency's procurements and promotes the acquisition of commercial items. CA approval is required for the JOFOC for actions exceeding the dollar threshold amount at FAR 6.304(a)(2), all exceptions to FBO notices made by unusual and compelling urgency, and contracts expected to exceed 5 years. In cases where the time period exceeds 1 year, the Executive Director for Operations (EDO) approves. The CA is appointed by the EDO. The CA is the Director of AMD but may be delegated to the Deputy Director of AMD.
2. The CA is responsible for—
 - (a) Promoting the acquisition of commercial items.
 - (b) Promoting full and open competition.
 - (c) Challenging requirements that are not stated in terms of functions to be performed, performance required, or essential physical characteristics.
 - (d) Challenging barriers to the acquisition of commercial items and full and open competition, including unnecessarily restrictive SOWs, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

H. Task and Delivery Order Ombudsman

1. The Task and Delivery Order Ombudsman (otherwise referred to as "Ombudsman") at the NRC is the Director of AMD.
2. FAR 16.505(b)(6) implements 10 U.S.C. Section 2304c(d) and 41 U.S.C. Section 253j(d), which require agencies to establish an Ombudsman to review complaints from contractors that pertain to issuance of task and delivery orders on multiple award delivery order contracts and task order contracts. The Ombudsman ensures that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required. The Ombudsman investigates the matter and proposes or implements a solution if the complaint is warranted or explains the matter if the complaint has no merit.

IV. ACQUISITION PLANNING

A. General

Early planning of the requirement office's procurement needs helps ensure timely awards. Central to sound acquisition planning is the completion of an APP for anticipated procurement actions.

B. Purpose of Advance Procurement Plan (APP)

1. The requirement office is required to submit timely APPs to allow for an efficient procurement planning process and efficient allocation and obligation of funds throughout the FY. The APP is a consolidated plan of all anticipated procurement actions for the FY.
2. The format of the APP includes a description of the work, type of procurement, and target date for award. AMD analyzes the APP information to efficiently track agency procurement plans through an established period of time, identifies requirements appropriate for SSG review and approval, and distributes acquisitions to procurement personnel. This analysis improves the work flow and decreases the processing time for contract requirements. Timely APP submission also enhances financial management planning.
3. APPs are submitted annually through the ODs to AMD and are updated quarterly.
4. The requirement office will consider the PALT when submitting requisitions to AMD. Award times vary for different procurement types depending on complexity, extent of market research conducted, extent of competition, and quality and completeness of the procurement request.
5. The requirement office should contact its assigned CS or CO to obtain additional guidance regarding lead times required for an individual procurement. The time necessary for the award of a contract varies. Factors that may influence the schedule and estimated PALT include—
 - (a) Dollar value of the action;
 - (b) Type of acquisition and complexity (i.e., construction, EIT, architecture-engineering (A-E));
 - (c) Extent of market research conducted;
 - (d) Availability of existing EWCs;
 - (e) Extent of competition and related issues;
 - (f) Adequacy of the requisition (e.g., all documents are attached and appropriate approvals, waivers, and justifications have been obtained);

- (g) Existing AMD workload;
 - (h) OGC legal review;
 - (i) Urgency of the requirement;
 - (j) Need for audits or related information;
 - (k) Requirement for approvals (e.g., SBA for small business set-asides, DOL for equal employment opportunity clearance and wage determinations, etc.);
 - (l) Availability of SEP to perform the technical evaluation; and
 - (m) Pre-award protest.
6. The requirement office is encouraged to submit requirements early in the FY as soon as funding is identified, although certified funds may follow later, up to the date of award to avoid delays. Urgent requirements should be discussed immediately with the responsible AMD branch chief. The acquisition is then assigned to a CS for processing, and individual needs of the requirement office may be considered when developing the milestone schedules.
 7. The requirement office should provide clear and accurate APP information. In addition to internal uses, this information is used to populate the agency's Forecast of Contract Opportunities that businesses rely upon.
 8. AMD will send a copy of the APP to SBP to be analyzed for potential small business procurement opportunities. SBP is available to help identify potential small business set-asides or small business subcontracting opportunities to the requirement office during the APP process. For additional information on the small business program, see MD 11.4, "NRC Small Business Program."

C. Ensure Valid Need for Contracting when Developing the APP

1. General

During development of the APP, the requirement office should consider if there is a valid need for contracting by considering the issues discussed in this section.

2. Duplication

The COR representing the requirement office is responsible for ensuring that a procurement action does not duplicate other NRC work. A review of existing EWCs can avoid duplicate efforts and contracts. The COR should document and share his or her findings as part of market research information provided to the CO.

3. Service Contracting

(a) Management Oversight of Service Contracting

- (i) Over the years, both actual and potential problems have been identified in the area of service contracting. Some of the major problem areas associated primarily with the use of contracting for consulting services include lack of competition, the potential for conflicts of interest on the part of service contractors, and the failure of the agency to exercise adequate control over the contractor's performance. The Office of Federal Procurement Policy (OFPP) in Policy Letter 93-1 specifies essential considerations in five areas that require close management scrutiny: inherently governmental functions, cost effectiveness, Government control, conflicts of interest, and competition.
- (ii) Policy Letter 93-1 (reissued May 18, 1994) sets out a series of questions as guidelines for agencies to use in improving controls in the five areas mentioned above. Both the COR and the CS should review requirements for service contracts on an individual or class basis to determine if the guidelines provided in the policy letter are applicable. If the guidelines apply and there is an "affirmative" response to any of the questions, the CO will further analyze the requirement and determine some method or course that would eliminate or mitigate the potential for abuse. (See Appendix A of OFPP Letter 93-1.)

(b) Personal Services Contracts

- (i) Services requested that appear to have an employer-employee relationship may not be implemented through contracting vehicles executed by AMD. The NRC does not have the authority from Congress to enter into personal services contracts.
- (ii) The CO will determine that services to be procured are not personal, using the information supplied in response to the questions on the requisition. The CO, generally through the CS, may also ask the affected NRC office or legal counsel for their recommendations. In addition, certain criteria for distinguishing personal from nonpersonal services appear in FAR 37.104.

4. Inherently Governmental Functions

- (a) The procurement of services is restricted to those services that are not inherently governmental functions. The requirement office must carefully consider this restriction to avoid delay in meeting a need that must be met by Government employees. The OFPP, in Policy Letter 11-01, "Performance of Inherently Governmental and Critical Functions," defines an inherently governmental function as one that is so intimately related to the public interest as to mandate performance by Government employees. (See OFPP Policy Letter 11-01, at http://www.whitehouse.gov/omb/procurement_index_work_performance/.) These

functions include those activities that require either the exercise of discretion in applying Government authority or the application of value judgments in making decisions for the Government. The Federal Activities Inventory Reform Act of 1998 (Public Law 105-270) provides a process for identifying the functions of the Federal Government that are not inherently governmental functions.

- (b) There are certain services and actions that, while generally not considered to be inherently governmental functions, are considered closely associated with inherently governmental functions and must be carefully considered. If these types of services are to be procured, the requirement office should ensure that appropriate controls are placed in the SOW so that the contractor does not perform, even inadvertently, inherently governmental functions.
- (c) Brief examples of the 24 inherently governmental functions from OFPP Policy Letter 11-01 are provided below for informational purposes but do not include full descriptions:
 - (i) The direct conduct of criminal investigation;
 - (ii) The control of prosecutions and performance of adjudicatory functions;
 - (iii) Command of military forces;
 - (iv) Combat;
 - (v) Security (as defined by OMB);
 - (vi) Foreign relations and policy;
 - (vii) Agency policy;
 - (viii) Budget policy, guidance, and strategy;
 - (ix) Federal program priorities or budget requests;
 - (x) Federal Government employment selection decisions;
 - (xi) Direction and control of Federal Government employees;
 - (xii) Direction and control of intelligence and counter-intelligence operations;
 - (xiii) Approval of position descriptions and performance standards for Federal employees;
 - (xiv) Determining the disposition of Government property;
 - (xv) Specific Federal procurement activities;
 - (xvi) Selection of grants and cooperative agreement recipients;
 - (xvii) Approval of agency responses to Freedom of Information Act requests;

- (xviii) Conduct of administrative hearings regarding matters of security clearances, matters of personal reputation, and eligibility to participate in Government programs;
 - (xix) Approval of Federal licensing actions and inspections;
 - (xx) Collection, control, and disbursement of fees, royalties, duties, fines, taxes, or other public funds;
 - (xxi) Control of U.S. Treasury accounts;
 - (xxii) Administration of public trusts;
 - (xxiii) Drafting of official agency proposals for legislation, Congressional testimony, responses to Congressional correspondence, or responses to audit reports from an inspector general, the GAO, or other Federal audit entities; and
 - (xxiv) Representation of the Government before administrative and judicial tribunals.
5. Performance of Commercial Activities (OMB Circular A-76)
- (a) OMB Circular A-76, "Performance of Commercial Activities," dated August 4, (revised May 29, 2003), and its supplemental handbook dated April 1, 1996 (revised May 29, 2003), establish Federal policy regarding the performance of activities by contractors versus Government employees. These documents set forth the procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel. OMB Circular A-76 requires, except for national security activities, mission-critical core activities, and temporary emergency requirements, a cost analysis and review of commercial activities proposed to be contracted unless these activities are exempt from the purview of the circular. Inherently governmental functions cannot be contracted. (See OMB Circular A-76, available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreq/rev_a76_052903.pdf.)
 - (b) The Director of AMD is the official responsible for implementation of OMB Circular A-76.
6. Equipment Lease or Purchase
- (a) For procurement of equipment normally available through both lease and purchase acquisitions, the CO will determine, on a case-by-case basis, whether acquisition by lease, purchase, or lease-to-purchase is more advantageous to the agency. The determination must be supported by comparisons of costs of the various acquisition alternatives with the guidance contained in FAR 7.4.

- (b) When requested by an agency, GSA will help in lease or purchase decisions by providing information that includes—
 - (i) Pending price adjustments to FSS contracts,
 - (ii) Recent or imminent technological developments,
 - (iii) New techniques, and
 - (iv) Industry or market trends.
7. Acquisition of Commercial Items or Services
- (a) To encourage the acquisition of commercial items and components, the FAR requires that agencies do market research before issuance of a solicitation. The purpose of the market research is to determine whether commercial items, nondevelopmental items, or commercial services are available that could meet the agency's requirements. (See FAR 2.101 and FAR Part 10.)
 - (b) Commercial services include those offered and sold competitively in substantial quantities in the commercial marketplace by established catalog or market prices for specific tasks performed under standard commercial terms and conditions.
 - (c) The requirement office is encouraged to acquire commercial items, services, or nondevelopmental items when possible. Prime contractors and subcontractors are required to incorporate, to the maximum extent practicable, commercial items, services, or nondevelopmental items as components of items supplied to the agency.
 - (d) Special simplified procedures can be used for the purchase of commercial property and services in amounts greater than the SAT, but not greater than the amount in FAR Part 13.003.
 - (e) The requirement office should contact an AMD branch chief or team leader as soon as possible after a need for a procurement action is identified. AMD will hold periodic meetings with offices to discuss acquisition planning. Once a procurement action has been assigned to a CS, he or she will coordinate with the COR to develop an approach for conducting market research. Techniques for conducting market research may include any or all of the following:
 - (i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.
 - (ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.
 - (iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.

- (iv) Querying Government Web sites that provide information relevant to agency acquisitions, including, but not limited to, contract pricing or pricelists, and position descriptions.
 - (v) Participating in interactive, online communication among industry, acquisition personnel, and customers.
 - (vi) Obtaining source lists of similar items from other contracting activities or agencies, trade associations, or other sources.
 - (vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers, or available online.
 - (viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.
 - (ix) Issuing or publishing a Sources Sought Notice or Request for Information in FBO.
- (f) If market research establishes that the agency's need may be met by a commercial item or service, the CO will solicit and award any resultant contract under the policies and procedures in FAR Part 12 in conjunction with the policies and procedures for solicitation, evaluation, and award prescribed in FAR Part 13, "Simplified Acquisition Procedures"; FAR Part 14, "Sealed Bid"; or FAR Part 15, "Contracting by Negotiation," as appropriate for the particular acquisition.

D. Initial Contact with the Acquisition Management Division (AMD)

1. As soon as a procurement need is identified, the requirement office is encouraged to solicit the advice and support of a CO. The CO will assign a CS who will facilitate the formation of an effective acquisition team consisting of procurement, legal, and technical personnel to plan and carry out the procurement.
2. The CS can assist the COR to ensure that the following key factors pertinent to the proposed acquisition are considered early in the procurement planning process:
 - (a) Acquisition strategy (e.g., 8(a) set-aside or sole source; HUBZone set-aside or sole source; service-disabled veteran-owned small business (SDVOSB) set-aside or sole source; small business set-aside, women-owned small business (WOSB) set-aside, and economically disadvantaged women-owned small business (EDWOSB) set-aside; full and open competition; and large business sole source);
 - (b) Performance standards, clear deliverables, surveillance methods, positive or negative incentives, and quality assurance surveillance plans, whenever applicable;
 - (c) Schedules for the performance of work;

- (d) IGCE;
- (e) Approvals and clearances;
- (f) Security and compliance requirements;
- (g) Discussion of potential conflict-of-interest concerns; and
- (h) Market research to determine whether agency needs can be met by items or services available in the commercial marketplace.

V. CONTRACT FUNDING CONSIDERATIONS

The NRC shall comply with the Anti-Deficiency Act and other fiscal laws. (See MD 4.2, “Administrative Control of Funds.”) In general, appropriated funds are subject to three basic fiscal constraints: time, purpose, and dollar amount.

A. Bona Fide Need Rule

The Bona Fide Need Rule (also known as the “time statute”) applies to the timing aspect of appropriated funds. It requires appropriated funds be used only for supplies and services for which a need arises during the period of that appropriation’s availability for obligation.

1. The NRC primarily uses no-year funds to finance its contractual obligations. The Bona Fide Need Rule does not apply to no-year funds.
2. No-year funds remain “available until expended.” Without a prescribed period of availability, there is no fixed period during which the bona fide need must arise and thus no fixed period in which the funds must be obligated and expended. (For further information, see www.gao.gov/special.pubs/appforum2010/contract_law.pdf; B-152766, Apr. 3, 1964, 43 Comp. Gen. 657, 661 (1964), at redbook.gao.gov/4/fl0018281.php; and B-279886, Apr. 28, 1998, at <http://www.gao.gov/assets/200/198959.pdf>.)

B. Severable Versus Non-Severable

1. Approach

The determination of whether services are severable or non-severable does not depend on the type of contract through which the services are procured but rather on the nature of the work being performed. For example, level-of-effort contracts may be severable or non-severable. A level-of-effort contract is a type of cost-reimbursement contract in which the scope of work is defined in general terms, with the contractor being obligated to provide a specified level of effort (i.e., person-hours) for a stated time period.

2. Severable Services

A severable service is continuing and recurring in nature and can be divided into components that have independent value and meet a separate and ongoing need of the Government. Each separate component or element of performance provides the Government an individual benefit, even if other related contract services are terminated or options not exercised. The services are recurring in nature. Recurring means that the value of the service does not depend on a single outcome as with a research report, but is realized periodically through the life of the service contract. When the need for a discrete portion of the services arises in a subsequent FY, that portion is considered severable and chargeable to appropriations available in the subsequent FY in which the services are rendered. Examples include lawn maintenance services, janitorial services, help desk support, or security services wherein the Government would have derived a direct benefit from the services performed if the contract was terminated before completion.

3. Non-Severable Services

- (a) A non-severable service constitutes a single undertaking or entire job with a defined end-product that cannot be feasibly subdivided into individual parts of any value independently. (An example would be a consulting study ending in a final report due in 18 months. If the services produce a single outcome, product, or report, the services are considered nonseverable.) In most cases, contracts or orders for nonseverable services must be funded in full at the time of award with a then-current appropriation. If the contract was terminated after 3 months, for instance, the Government would not have anything of considerable value to show for its investment without the final report. (Another example would be if a person had a car in a body shop and the body shop agreed to fix the car for a specified sum of money. The mechanic spends 8 hours working on the car but the agreement is terminated before the car is fixed. The work performed on the person's car has no independent value because the car still does not function properly. This agreement would be a non-severable contract because the final product must be a functioning car, and any prior efforts by the mechanic are worthless and have no independent value.)
- (b) No-year appropriations are available for obligation without FY limitation and are not subject to the Bona Fide Need Rule. However, the general rule is that bona fide need applies to non-severable services, regardless of the type of appropriation used. A non-severable service must be fully funded at the time of award with funds available in the current FY at the time of contract award, unless a multi-year contract is authorized for use. (See FAR 17.1.) A contract that is viewed as "entire" is chargeable to the FY in which it was awarded, notwithstanding that performance may extend into subsequent FYs. Incremental funding is not permitted unless using multi-year contract procedures.

4. Contract Options

Options are considered non-severable services with each option producing individually completed products or services that provide independent value. Options constitute a unilateral right of the Government to procure additional supplies or services pursuant to FAR Subpart 17.2, "Options." As an example, a contract for severable services with a 12-month base period, followed by four 12-month option periods, would fund the base period and each option period with the fiscal-year appropriation available for each period in which there is a bona fide need. The Government must fund options at the time the agency exercises the option.

5. Incremental Funding

Incremental funding is a method of funding contracts for severable services that provides specific spending limits that are less than the total estimated cost/price of the entire contract, with the understanding that additional funds are expected to be provided at a later date. Incremental funding allows severable cost-reimbursement type contracts awarded for more than 12 months to be funded from succeeding FYs. It shall not be used in contracts for construction or A-E services. (See FAR Subpart 32.7, "Contract Funding.")

6. Cost-Reimbursement

Cost-reimbursement contracts may be incrementally funded when the following conditions are met:

- (a) Includes FAR clause 52.232-22, "Limitation of Funds," and
- (b) The services being acquired are severable.

7. Fixed-Price, Time-and-Materials, and Labor-Hour

- (a) Fixed-price, T&M, and labor-hour contracts may be incrementally funded when the following conditions are met:
 - (i) Incremental funding is not prohibited by the agency's applicable appropriations, financial management regulations, or acquisition regulations.
 - (ii) The services being acquired are severable.
 - (iii) The acquisition instrument includes any relevant agency supplement and FAR clauses necessary to limit the Government's financial liability.
- (b) It may be more appropriate at times to establish a shorter period of performance to coincide with the amount of funding available to perform the work to limit the Government's risk.

C. Other Funding Concerns

1. New Work

Out-of-scope tasks or activities requested under a contract constitute new work and shall be fully justified under other than full and open competition. It cannot be included in the contract in an attempt to exhaust available funding.

2. Continuing Resolution

As continuing resolutions (CRs) become more commonplace and longer in duration, it may be advisable to award contracts that do not begin in October to lessen the impact of CR-related funding limitations.

3. Agency Funding Deadlines

Funding for requisitions should be provided to AMD by the cutoff date indicated by OCFO each FY.

VI. CONSIDERATIONS AND APPROVALS BEFORE SUBMITTING A REQUISITION

A. Interaction with the Acquisition Management Division (AMD)

1. After submitting the APP to AMD, the requirement office prepares the requisition for all procurements.
2. Before initiating the requisition, the requirement office should consider the use of in-house resources or use of another agency's resources (e.g., the agency's personnel facilities, equipment, or the agency's contracts). Once it is decided that a requisition is needed, the considerations discussed below need to be assessed.
3. Once a requisition is finalized, it is forwarded to the AMD branch chief responsible for processing the requisition for the particular type of work.
4. A CS is assigned the requisition and contacts the requirement office to discuss all aspects of the procurement, including the following:
 - (a) SOW;
 - (b) IGCE;
 - (c) JOFOC (if applicable);
 - (d) Possible sources/vendors;
 - (e) Market research;
 - (f) Documentation and approvals that are required with the requisition;

- (g) Acquisition strategy (e.g., 8(a) set-aside or sole source; HUBZone set-aside; veteran-owned small business (VOSB) set-aside, SDVOSB set-aside or sole source; small business set-aside, WOSB set-aside, EDWOSB set-aside; full and open competition; and large business sole source);
- (h) Contract type;
- (i) Proposal information and evaluation criteria and factors;
- (j) Suggestions to streamline the procurement;
- (k) Procurement milestone schedule, including a schedule for interviewing 8(a) firms or HUBZone firms, if appropriate; and
- (l) OCOI concerns, if any.

B. Competition Requirements

In planning for a procurement action, the extent of competition must be considered by the requirement office. If there are two or more known sources available to satisfy a requirement, a full-and-open competition method normally must be used, unless an exception applies.

1. Limited Competition or Sole Source Acquisitions

- (a) With certain limited exceptions, CICA requires that Federal agencies promote and provide for full and open competition in soliciting offers and awarding Government contracts. The NRC adheres to FAR Part 6, "Competition Requirements," which states that no agency shall contract for supplies or services from another agency to avoid the competition. Except for procurements using the simplified acquisition procedures, all negotiated acquisitions must be conducted through competitive full and open procedures, as required by FAR 6.101, unless compelling and convincing reasons or circumstances determine other than full and open competition to be in the best interest of the Government. The Government benefits from competitive prices and from current contractors who exert their best effort to deliver high-quality products and services. When noncompetitive acquisitions are determined justifiable, all possible efforts must be taken to avoid the need for subsequent or continuing noncompetitive acquisitions, including removing unnecessary barriers to competition and engaging in early acquisition planning. This section does not apply to acquisitions awarded pursuant to FAR Part 19, "Small Business Programs."
- (b) Procurements using other than full and open competition include those that limit competition or those that are sole source acquisitions.

2. Circumstances Permitting Other Than Full and Open Competition

- (a) FAR 6.302 permits other than full and open competition (limited competition or sole source acquisitions) under the following circumstances:
 - (i) Products or services are available from only one responsible source and no other type of supplies or services will satisfy the agency's needs.
 - (ii) The requirement is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources. The agency must still request offers from as many potential sources as practicable under the circumstances.
 - (iii) The agency must award to a particular source to maintain a facility or supplier in case of a national emergency or to establish or maintain an essential engineering, research, or development capability provided by an educational or other nonprofit institution or a federally funded research and development center (FFRDC).
- (b) The NRC must comply with statutory requirements and guidance regarding preferences given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance for Presidential declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
- (c) FFRDC may be used when awarding sole source contracts or orders with CNWRA, a division of Southwest Research Institute, under the terms and conditions of its charter with the NRC (FAR 35.017; FAR 6.302-3).
- (d) Procurement is required by the terms of an international agreement or treaty or by written direction of a foreign government that is reimbursing the agency for the cost of the procurement.
- (e) A statute expressly authorizes or requires procurement through another agency from a specified source or the agency needs a brand-name commercial item for authorized resale. FAR Subpart 17.5, "Interagency Acquisitions," may be used when entering into agreements with other Federal agencies to obtain supplies or services when meeting established criteria.
- (f) Disclosure of the agency's needs would compromise national security unless the number of sources is limited. The agency must request offers from as many potential sources as is practicable under the circumstances.
- (g) The EDO, as agency head, determines it is not in the public interest to use competitive procedures and gives Congress written notice 30 days before award. This authority cannot be delegated. (See FAR 6.302-7, "Public interest.")

3. Approvals of Other Than Full and Open Competition

- (a) Except under urgent circumstances, a procurement request for other than full and open competition may not proceed until the rationale for doing so is provided in a written JOFOC. The COR must provide the necessary data in a draft JOFOC submitted with the requisition package that supports the determination. The CS works with the requirement office to finalize the JOFOC for review and approval once the COR and the CO certify its accuracy and completeness. The CO will submit the final JOFOC to the appropriate approving official(s). Guidance regarding the format and content of a JOFOC may be found in FAR 6.303. (See the contract templates available in the NEAT Libraries.)
- (b) Under urgent circumstances, for example, when it is necessary to obtain emergency supplies or services, the CO may determine that a written justification for procurements under the second exception, unusual and compelling urgency, may be executed after award. However, a documented verbal approval or an electronic approval must be obtained from the CA (may be redelegated to the Deputy Director of AMD) before proceeding with a procurement higher than the dollar threshold amount specified in the AMD branch chief's warrant.
- (c) The CA challenges barriers to and promotes full and open competition of the agency's procurements and promotes the acquisition of commercial items.
- (d) All exceptions to the requirement to place a notice on the FBO made by unusual and compelling urgency must be approved by the CA.
- (e) The determination made to use the FAR exception to competition for urgent and compelling circumstances must adequately address the factors listed in FAR 6.303. Formal justifications are not required for acquisitions valued at less than the SAT.
- (f) Once the JOFOC has been approved, the procurement for other than full and open competition proceeds as a normal negotiated acquisition.

4. Procedures for Limited Competition or Sole Source Acquisitions

- (a) The requirement office should discuss procurements using other than full and open competition with AMD as early as possible during the acquisition planning stage, preferably before submitting the requisition. These discussions may clarify a need for other than full and open competition, provide the requirement office with the names of other sources, allow proper scheduling of the procurement, and avoid delays that may otherwise occur if the CO determines that a noncompetitive acquisition is not justified.
- (b) A signed JOFOC should be prepared and submitted with the requisition. Guidance regarding the format and content of a JOFOC may be found in FAR 6.303. When

the CO reviews a JOFOC, the CO will determine the best course of action based on the JOFOC and clarifications from the requirement office.

5. Other Than Full and Open Competition is Not Justified; Proceed with Full and Open Competition

If the CO determines that a sole source procurement is not adequately justified, the CO will discuss the decision with the requirement office. If the decision remains firm, the requisition will be returned to the requirement office for development of a competitive procurement.

6. CO Agreement for Use of Other Than Full and Open Competition

(a) If the CO agrees that the proposed procurement should be awarded without full and open competition after reviewing a draft JOFOC, the CO will immediately place a notice of intent to contract on a sole source basis or a limited-source basis in FBO. FAR 5.203 requires that a notice of the contract action be published in FBO at least 15 days before issuance of a solicitation and that the agency allow at least 30 days from the issuance date of the solicitation to receive proposals and bids. Therefore, award may not occur earlier than 45 days after publication of the requirement in FBO.

(b) The FBO notice of intent to negotiate with one source should—

(i) Provide detailed information on the scope of work or specifications so that interested parties may respond.

(ii) Invite interested sources to identify their ability to carry out the requirements.

(iii) Include a statement explaining why the NRC believes only one source is available, if appropriate.

(c) The CO will respond to questions from potential offerors concerning the requirement only during the response time. Responses to the FBO notice should be reviewed upon receipt, when possible, rather than at the end of the period. The CO may use personnel from the requirement office to aid the CO in evaluating the responses.

7. Sole Source Acquisitions under FAR 6.302-1, “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements”

If responses to the FBO notice of intent to contract on a sole source basis (based upon FAR 6.302-1), are received and indicate that there are other potential vendors in the marketplace capable of meeting the agency's needs, the procurement will be competed on a full-and-open basis. Also, if the acquisition exceeds the SAT and two or more responsible small businesses respond that offer the products or services required, then the “Rule of Two” applies and the procurement shall be set-aside for small business and competed. (See FAR 19.502-2.)

8. Sole Source Acquisition under FAR 6.302-2, "Unusual and Compelling Circumstances"
 - (a) All requirements citing urgency as the exception must receive careful scrutiny to assure that the rationale provided is valid. The urgency exception contained in FAR 6.302-2 is not acceptable if poor planning was the primary cause and is not a valid. GAO has held that lack of planning or the delaying of a requirement to use the urgency exception is viewed as an attempt to circumvent CICA requirements.
 - (b) Section 862 of the Duncan Hunter National Defense Authorization Act for FY 2009 (Public Law 110-417) amended the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(d)) to include a limit on the period of performance of contracts awarded noncompetitively under unusual and compelling urgency circumstances. The total period of performance may not exceed the time necessary to meet the unusual and compelling requirements of the work to be performed under the contract and award of another contract for the required goods or services through the use of competitive procedures. The period of performance may not exceed 1 year for acquisitions above the SAT, unless the EDO, as agency head, determines that exceptional circumstances apply.
 - (c) If the CO is satisfied that a sole source acquisition is bona fide and determines that the NRC's need for the item or services is of unusual and compelling urgency, the CO may forego the requirement to place a notice in FBO describing the procurement and can waive approval of the JOFOC until after award.
 - (d) If other than full and open competition is justified, a final justification is developed and approved.
9. Sole Source Acquisitions Not Requiring a JOFOC (Section 8(a) Small Business Development, HUBZone (if only one), SDVOSB (if only one))
 - (a) Section 8(a) Small Business Development

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) establishes a program that authorizes the SBA to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. To qualify, a business must be 51 percent owned and operated by socially and economically disadvantaged U.S. citizens in business for at least 2 years, and owners must have a net worth under \$250,000. SBA certifies eligible socially and economically disadvantaged small businesses and includes them in the 8(a) program to qualify for sole source contracts. The SBA's subcontractors are referred to as "8(a) contractors." The Act permits sole source contracts to be awarded without competition where the value, including options, does not exceed

that amount stated in FAR 19.805-1. The SBA may not accept for negotiation a sole source 8(a) contract that exceeds the amount stated in FAR 19.808-1, unless the requesting agency has completed a justification and approval under the requirements of FAR 6.303.

(b) Service-Disabled Veteran-Owned Small Business (SDVOSB) Program

The Veterans Benefit Act of 2003 (15 U.S.C. 657f) created the procurement program for small business concerns owned and controlled by service-disabled veterans (commonly referred to as the “Service-Disabled Veteran-Owned Small Business (SDVOSB) Program”). The purpose of the SDVOSB Program provides Federal contracting help to SDVOSB concerns. An SDVOSB is at least 51 percent owned by one or more service-disabled veterans. There is no formal certification process (self-certify) except for the Department of Veterans Affairs qualifying the persons as being service-disabled. A sole source contract may be awarded to an SDVOSB if the CO has a reasonable expectation of just receiving one qualified SDVOSB. The threshold for a sole source SDVOSB contract is up to the amount stated in FAR 19.1406. (See MD 11.4.)

10. Section 8(a) Designation on the APP and the Requisition

(a) The procurement should be identified early in the planning phase as an 8(a) sole source (if possible, as early as when completing the APP form).

(b) When preparing the requisition, the requirement office should identify the action as an 8(a) procurement and may suggest one or more companies as potential sources to perform the work. SBP can help the NRC office in identifying potential 8(a) firms. If neither can identify a source, the CS sends an offering letter to SBA identifying the requirement and requesting the name of a contractor. If a source has been identified, the CS sends an offering letter to SBA that requests approval of the contractor. Under the partnership agreement between the SBA and the NRC, if the CS does not receive approval within 5 working days, the CS may proceed with the procurement.

11. Limited Competitions Not Requiring a JOFOC (8(a) Set-Aside, HUBZone Small Business Set-Aside, Small Business Set-Aside, WOSB Set-Aside, and EDWOSB Set-Aside)

A small business set-aside is an acquisition exclusively or partially reserved for the participation of small business concerns under the Small Business Act. It restricts the competition to small business concerns that qualify under the applicable standards. The CO decides whether an acquisition should be set aside, with input from SBP.

(a) Small Business Set-Aside (Total or Partial)

A total set-aside restricts the entire procurement, whereas a partial set-aside restricts only a stated portion of it. Each acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold, but not exceeding the SAT, as described in FAR 19.502, is automatically reserved exclusively for small business concerns. Contracts must be set aside for these types of small business unless the CO determines there is no reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in market prices, quality, and delivery. (See FAR 2.101 for micro-purchase and simplified acquisition dollar thresholds.)

(b) HUBZone Small Business Set-Aside

- (i) The HUBZone Act of 1997 (15 U.S.C. 631 note) created the HUBZone Program (sometimes referred to as the “HUBZone Empowerment Contracting Program”). The purpose of the HUBZone Program is to provide contracting opportunities for qualified small business concerns located in historically underutilized, economically distressed communities or business zones (high unemployment, low-income areas) in an effort to increase employment opportunities, stimulate capital investment, and empower communities through economic leveraging and development in those areas. SBA regulations permit set-aside competitions among HUBZone small businesses (over the micro-purchase threshold), where (1) there is a reasonable expectation of receiving two or more offers from qualified HUBZone small businesses, and (2) at a fair and reasonable price. (See FAR 19.1305.)
- (ii) A sole source contract may be awarded to a HUBZone contractor if the CO has a reasonable expectation of receiving just one qualified HUBZone small business. The threshold for this type of sole source contract is up to the amount stated in FAR 19.1305.

(c) Woman-Owned Small Business Set-Aside

A WOSB is a small business concern owned and controlled by women. Section 3(n) of the Small Business Act defines a women-owned small business as one that is at least 51 percent owned by one or more women and the management and daily business operations are controlled by one or more women. A WOSB may be certified by an SBA-approved third party certifier, or the CO may accept a firm’s self-certification as a women-owned small business, subject to the conditions stated in FAR 19.1503. SBA regulations permit set-aside competitions among WOSBs, where—

- (i) There is a reasonable expectation of receiving two or more offers from qualified WOSBs (including EDWOSBs), and

(ii) The value, including options, does not exceed the dollar threshold stated in FAR 19.1505.

(d) Economically Disadvantaged Women-Owned Small Business Set-Aside

An EDWOSB is a women-owned business that is at least 51 percent owned by one or more women and the management and daily business operations of the concern are controlled by an economically disadvantaged woman. An EDWOSB may be certified by an SBA-approved third party certifier, or the CO may accept a firm's self-certification as an economically depressed women-owned small business, subject to the conditions stated in FAR 19.1503. SBA regulations permit set-aside competitions among WOSBs exceeding the threshold value stated in FAR 19.1505.

(e) "Rule of Two"

The "Rule of Two" applies to any acquisition above the SAT when there is a reasonable expectation of both outcomes:

- (i) Offers will be obtained from at least two responsible small business concerns offering the products and services of different small business concerns.
- (ii) Award will be made at fair market prices.

C. Small Business Preference Programs

1. It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, VOSB, SDVOSB, HUBZone small business, SDB, WOSB, and EDWOSB concerns. These concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any Federal agency, consistent with efficient contract performance.
2. The NRC negotiates small business procurement goals biennially with SBA. To meet these federally-mandated goals, the NRC is committed to including small business, VOSB, SDVOSB, HUBZone small business, EDWOSB, WOSB, and EDWOSB (i.e., Section 8(a) Program) in competitive acquisitions and schedule buys, to the maximum extent possible. Information regarding these programs may be found in FAR 19.201, "General Policies," and on the SBA Web site at <http://www.sba.gov>. In addition, SBP provides small business information pertaining to the NRC on the agency's external Web site at <http://www.nrc.gov/about-nrc/organization/sbcrfuncdesc.html>).

D. Performance-Based Acquisition (PBA)

1. General

- (a) FAR 37.601(b) states that performance-based acquisition (PBA) shall be used to the maximum extent practicable when acquiring services.
- (b) PBA is a method of contracting based on performance specifications and is the preferred method for acquiring services in the Federal Government. In PBA contracting, all aspects of the work and acquisition are structured around and focus on the purpose of the work to be performed (i.e., performance results or outputs) rather than the manner in which the work is to be performed.
- (c) PBA contract requirements are written in clear, specific, and objective terms with measurable outcomes. Its methods are intended to ensure that required performance is achieved and that total payment is related to the degree to which services performed meet contract requirements and quality standards. (See FAR Subpart 37.6.)
- (d) If a requirement office believes that a performance-based contract is not appropriate for performance of a specific service, sufficient rationale must be provided with the requisition explaining the unique circumstances.

2. Exceptions to Using Performance-Based Acquisition

Exceptions to using PBA include—

- (a) A-E services acquired under 40 U.S.C. 541-544 (FAR Part 36),
- (b) Construction (FAR Part 36),
- (c) Utility services (FAR Part 41), and
- (d) Services that are incidental to supply purchases.

3. Components of Performance-Based Contracts (PBC)

Performance-based contracts (PBC) include—

- (a) A PWS describing requirements in results-oriented terms rather than the methods or processes to perform the work;
- (b) Measurable performance standards (i.e., terms of quality, timeliness, quantity, etc.) used to assess work performance; and
- (c) Performance incentives (positive or negative), as appropriate.

4. Performance Work Statement (PWS)

- (a) Defines requirements in clear, concise language identifying specific work to be accomplished in “what” is to be the required output rather than either “how” the work is to be accomplished or the number of hours to be provided.
- (b) Relies on the use of measurable performance standards, acceptance criteria, and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work.

5. Quality Assurance Surveillance Plan

- (a) Government contract quality assurance surveillance shall be performed when necessary to determine that the supplies or services conform to contract requirements. (See FAR 46.401.)
- (b) As required by FAR 46.103(a) and 46.401(a), quality assurance surveillance plans should be prepared by the COR when preparing the PWS. These plans help the Government ensure that the contractor's work is performed at quality levels specified in the contract. These plans should include—
 - (i) All work requiring surveillance by the Government (what),
 - (ii) The method of surveillance (how), and
 - (iii) The place or places where the Government reserves the right to perform quality assurance surveillance (where).
- (c) These plans should—
 - (i) Recognize the responsibility of the contractor to carry out its quality assurance obligations. (See FAR 46.105.)
 - (ii) Contain measurable inspection and acceptance criteria corresponding to the performance standards in the SOW.
 - (iii) Focus on the level of performance required by the SOW rather than the methodology used by the contractor to achieve that level of performance.

6. Incentives

To the maximum extent, performance incentives, either positive or negative or both, should be incorporated into the contract to encourage contractors to increase efficiency and maximize performance. These incentives should correspond to specific performance standards in the quality assurance surveillance plan and should be capable of being measured objectively. (See FAR Subpart 16.4.)

7. Prohibitions for the Acquisition of Electronic and Information Technology (EIT)

- (a) FAR 39.104 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of EIT services unless the CO first determines that the needs of the agency cannot be met without this requirement, or the needs of the agency require the use of a type of contract other than a performance-based contract. The contractor proposes to the NRC how the work will be performed and by whom.
- (b) PBA references include “NRC’s Acquisition Guidebook for Contracting Officer’s Representatives” and GSA’s “Seven Steps to Performance-Based Acquisition,” available at www.acquisition.gov/comp/seven_steps/home.html.

E. Advisory and Assistance Services

1. Advisory and assistance services means those services provided under contract by a contractor (nongovernmental source) to support or improve the NRC’s organizational policy development, decision making, management and administration, program and/or project management and administration, or research and development activities. It can also mean the furnishing of professional advice or guidance to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the services mentioned above, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training, and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations.
2. Advisory and assistance services generally do not include the routine use of engineering, scientific, legal, accounting, or other professional services to support the NRC’s existing administrative and regulatory functions. Advisory and assistance services involve reviewing or improving those functions.
3. The FAR provides guidance on procuring advisory and assistance services. Before issuing a contract for advisory and assistance services, the CO must ensure that the EDO, as agency head, makes a determination that sufficient personnel with the requisite training and capabilities are available within the agency to evaluate or analyze proposals. Program personnel should seek guidance whenever there is doubt about the application of the FAR criteria defining advisory and assistance services. (See FAR Subpart 37.2.)

F. Contracts Between the NRC and Former NRC Employees

1. NRC policy is to place only competitively awarded contracts with an individual who was employed by the NRC within 2 years from the date of the requisition. The former NRC employee who separated from the agency within 2 years of a requisition cannot

- receive a sole source award and can only participate in an NRC acquisition if he or she is part of a competitively-issued contract. The policy also applies to the—
- (a) Noncompetitive award of contracts to organizations where former NRC employees have dominant ownership interests in the organization, including partners or majority stockholders;
 - (b) Noncompetitive award of contracts to organizations where former NRC employees have dominant management interests, including principal officers or where the organization is predominantly staffed by former NRC employees;
 - (c) Noncompetitive award of contracts, task orders, or other NRC work assignments where the particular assignment is to be performed by designated former NRC employees, including principal investigators, key personnel, and others who will perform more than a nominal amount of the work in question.
2. The following procurement actions are considered noncompetitive for the purposes of this policy:
 - (a) Contracts awarded noncompetitively under the SBA's Small Business Set-Aside Program.
 - (b) Individual task orders if the former employee was not identified as “key personnel” in a proposal that was evaluated under competitive procedures.
 - (c) Unsolicited proposals.
 - (d) Subcontracts that require review for granting consent under NRC prime contracts.
 3. The term “NRC employee” includes special Government employees performing services for the NRC as experts, advisors, consultants, or members of advisory committees, if—
 - (a) The contract arises directly out of the individual's activity as a special employee,
 - (b) The individual is in a position to influence the award of the contract, or
 - (c) The CO determines that another conflict of interest exists.
 4. A justification explaining why it is in the best interest of the Government to contract with an individual or firm described above in this section on a noncompetitive basis may be approved by the SPE after consulting with the EDO. This justification is in addition to any justification and approvals that may be required by the FAR for use of other than full and open competition.
 5. Nothing in this policy statement relieves former employees from post-employment restrictions, including NRCAR 2009.100 (NRC Policy) and 18 U.S.C. 207, “Restrictions

on former officers, employees, and elected officials of the executive and legislative branches.” Contact the OGC-designated agency ethics officials for advice and counsel.

G. Contracts Expected to Exceed 5 Years

1. FAR 17.204(e) states that the total of the basic and option years shall not exceed 5 years in the case of both services and supplies. Statutes applicable to various classes of contracts may place additional restrictions on the length of contracts. Certain research and development contracts and information technology (IT) contracts may exceed 5 years. If it is known in advance that the term of a contract is required in excess of the provisions in FAR 17.204(e), a written JOFOC must be approved by the CA.
2. The CO may approve noncompetitive contract extensions to 5-year contracts within the limits of his or her delegation for up to a total of an additional 6 months for completing the competitive process of a follow-on contract, provided that the requisition for a follow-on or replacement contract was received in AMD not less than 6 months before the end of the fifth year. Other extensions beyond 6 months must be approved by the CA (may be redelegated to the Deputy Director of AMD). Extension of task orders beyond contract expiration varies with the terms of each IDC.
3. Under FAR 16.505(c)(3), IDCs may be extended on a sole source basis for up to 6 months if conditions listed at FAR 16.505(c)(3)(i) and (ii) apply. The NRC permits orders to continue beyond the expiration date of an IDC up to 1 year beyond the IDC expiration date (base and option periods combined).

H. Applicable Security Requirements to be Considered for All Contracts and Subcontracts

1. When preparing to submit the requisition, the COR needs to consider whether performance of the contract or subcontract may require contractor employees to undergo personnel security screening for unescorted access to the NRC site or buildings, access to sensitive EIT systems or information, unescorted access to nuclear power plants, or access to unclassified safeguards information. In addition, the COR needs to consider whether the performance of the contract may require the contractor's facility to be cleared to use, process, store, reproduce, transmit, or otherwise handle NRC classified information. The COR may request guidance and help from DFS regarding the review of the security considerations for contractor personnel or facility clearances and from the Computer Security Office for determining the sensitivity of EIT systems and information.
2. If any type of clearance is needed for contract performance, the requirement office will forward the original of NRC Form 187 to AMD as part of its requisition package. This form provides the necessary classification or security specifications and furnishes the basis for providing security and classification requirements to

- contractors who will have access to Government or power reactor facilities, classified information, sensitive EIT information, power reactor access, or access to safeguards information. AMD forwards NRC Form 187 and a detailed SOW to the Director of DFS, ADM. (See MD 12.1, "NRC Facility Security Program.")
3. The signed NRC Form 187 is included in the solicitation, as appropriate. However, solicitations will not be issued until AMD has received an approved NRC Form 187, unless the Director of AMD approves an exception to this policy. DFS approval of NRC Form 187 does not constitute any security approval to begin work. It does, however, indicate—
 - (a) DFS anticipates no fundamental security or classification problems in the recommended procurement action by the information provided on NRC Form 187.
 - (b) DFS agrees with the basic classification levels and guidance provided by the authorized classifier of the requirement office.
 4. The following types of clearances may be required:
 - (a) Site Access Facility Clearance
 - (i) The requirement office should indicate on the requisition package if contractor personnel will require continuous access to NRC buildings during the course of contract performance so that the NRC local clause, entitled "Security Requirements for Building Access Approval," may be included in the solicitation as a term and condition of the contract. Background screening of contractor personnel may be necessary if access to NRC buildings is required on a continuous basis (in excess of 30 days) or access otherwise requires an NRC photo identification badge or keycard. Background screening may also be necessary if the contractor requires unescorted access to a nuclear power facility in performance of the contract. Facility security approval, which includes a foreign ownership control or influence determination, is required if the contractor needs to store classified information at a facility.
 - (ii) NRC employees shall discourage contractor personnel from engaging in any marketing and/or soliciting activities while performing under an NRC contract. All instances of this activity must be reported to the CO.
 - (iii) The contractor is responsible for ensuring that all of its employees, including any subcontractor employees and any subsequent new employees who are assigned to perform the work on site, are approved by the NRC for building access. All contractor personnel whose contract duties require their presence onsite require a distinctive badge furnished by the NRC. Once a contract has been awarded, a COR is formally delegated responsibility by the CO to, among other things, help the contractor in obtaining the badges for the contractor personnel.

- (iv) A contractor employee shall not have access to NRC facilities until approval by the Facilities Security Branch (FSB), DFS, ADM (hereinafter FSB), first for temporary access (based on a favorable adjudication of his or her security forms) and final access (based on favorably adjudicated background checks by the Office of Personnel Management. Under the procedures found in MD 12.3, and after notice of selection by the CO, the contractor representative will submit to the COR a completed security forms packet, including fingerprint charts (FD 258) for all contractor personnel whose contract duties will require their presence onsite, as well as any officers of the firm who, for any reason, may visit the work site(s) for an extended period of time.
 - (v) The COR will review the names to ensure that the list of people requested to receive onsite authorization is limited to only those with a real need to be onsite. After the COR's review, the fingerprint charts (FD 258) shall be provided to FSB, which is responsible for granting or denying temporary building access approval to an individual upon its review of the information. Subsequently, the Personnel Security Branch (PSB), DFS, (hereinafter PSB) may grant or deny permanent building access approval by the results of its investigation and adjudication guidelines. Timely receipt of properly completed security applications may be included as a contract requirement. Failure of the contractor to comply with this condition may be a basis for voiding the notice of selection. In that event, the NRC may select another firm for award. An individual will be subject to a reinvestigation every 5 years.
- (b) EIT Access Clearance
- (i) DFS operates a Government-sponsored personnel screening program for contractors providing computer-related supplies or services to ensure that the contractor's employees are eligible for access to the agency's sensitive EIT systems and data.
 - (ii) The proposer/contractor must identify all individuals and propose the level of EIT approval for each. (See MD 12.3.) The NRC requirement office will make the final determination of the level, if any, of EIT approval required for all individuals working under a contract.
- (c) Classified Information Clearance
- (i) When contract performance involves access to or development of classified information, personnel and/or facility security requirements must be imposed on prospective NRC contractors. The requirement office, with the help of

DFS, must establish the following level and type of classified information the contractor requires:

- Whether reports, including interim and final documents, will be classified. The restrictions that must be placed on the proposed dissemination of information developed under the contract.
 - Whether the proposed contract should contain special classification or security clauses (i.e., drug testing, IT security clauses).
 - Whether a contract awarded initially on a nonclassified basis may produce classified results or become classified during the course of the contract.
- (ii) The requirement office should indicate on the NRC Form 187 package if contractor personnel will require access to classified information during the course of contract performance so that the NRC local clause, entitled “Security Requirements for Building Access Approval,” may be included in the solicitation and as a term and condition of the resultant contract.
- (iii) The contractor submits clearance forms as designated in MD 12.3 to the COR, and the COR forwards the forms to DFS.
- (iv) DFS notifies the requirement office by letter of security facility approval and personnel access authorizations. A copy of the security approval letter is sent to the COR. The COR then notifies the contractor whether the security facility approval has been allowed or denied. AMD provides DFS a copy of the final contract and all modifications involving classified information or security matters.
- (d) Facility Clearance
- (i) A facility clearance, which includes a foreign ownership control or influence determination, is required if the contractor needs to store classified information at a facility. Facility clearance requests are handled by FSB.
 - (ii) PSB will forward a copy of NRC Form 187 to FSB to determine whether the facility in question meets the necessary requirements to receive facility clearance.

I. Strategic Sourcing Group (SSG) Approval Process

The SSG process has been developed to maintain overall consistency and effectiveness when processing procurement actions (contracts or modifications) estimated above the established agency SSG dollar threshold amount for commercial contracts. An SSG form is completed by the NRC COR and shared with the CO and CS for initial review, and signed by OCFO and the Director of AMD before submission to the SSG for approval. NRC Form 827, “NRC Small Business Review,” is required as part of the SSG package. (See SSG Web site for dollar thresholds, the form, and other information

at <http://portal.nrc.gov/edo/adm/adsa/StrategicAcq/ASPF/FL/Forms/AllItems.aspx> and SRM-COMSECY-10-0020.)

J. Intraoffice and Interoffice Concurrences

Intraoffice and interoffice concurrences are required apart from and before the initiation of the procurement process. Obtaining these concurrences is the responsibility of the requirement office. These concurrences, discussed below, should be kept in the requirement office's file.

1. Electronic and Information Technology (EIT) Acquisitions

(a) NRC policy guidance regarding EIT acquisitions can be found in MD 2.8, "Project Management Methodology." Certain pre-acquisition approvals need to be obtained under MD 2.8 before procuring EIT resources. These approvals are applicable to all EIT acquisitions, including those awarded for services or equipment whether procured through simplified acquisitions, commercial contracts, or blanket purchase agreements (BPAs). Certain EIT acquisitions also require Capital Planning and Investment Control (CPIC)- related approvals specifically discussed in MD 2.8. The structured CPIC review process helps ensure that projects have clear requirements, a sound business case justification, and adequate planning for development and implementation under Federal statutes and regulations.

(b) EIT resources may also be referred to as IT.

2. Coordination of Facility Use and Property

If NRC facilities will be used, the requirement office should contact the Space Design Branch, ADSC, ADM, before submitting the requisition. If property will be procured or furnished under the proposed procurement, the requirement office should coordinate the effort with the NRC Property Management Officer, PLSB, ADSC, ADM. Discussions are held to ensure that needed NRC facilities are available for onsite requirements and that duplicate materials are not purchased if already available within the agency.

3. JOFOCs for Delivery and Task Orders

(a) Use of brand-name product or features. (See FAR 16.505(a).)

(b) Exception to Fair Opportunity, if multiple award contract. (See FAR 16.505(b).)

VII. MARKET RESEARCH

A. Government Regulations

The Government's regulations governing market research are defined primarily in FAR 2.101, FAR 7.102, and FAR Part 10.

B. Definition of Market Research

Market research is the continuous process of collecting and analyzing data on products, services, business practices, and vendor capabilities to satisfy agency needs. Market research serves as the foundation for developing an effective solicitation and a successful contract.

C. Reasons for Market Research

1. Market research is required to determine whether agency needs can be met by items or services available in the commercial marketplace. Market research identifies commercial practices regarding customizing, modifying, or tailoring items to meet customer needs. It identifies customary industry terms and conditions including warranties, acceptance, inspection, and maintenance. Quality market research can result in greater awareness and knowledge of the marketplace, vendor community, and Government procurement history. This information can help create better business decisions affecting the nature and extent of competition; use of small business set-asides or sole source procurements; and use of available contract mechanisms, including agency EWCs, GSA multiple award schedule (MAS) contracts, Governmentwide acquisition contracts (GWACs), multi-agency contracts (MACs), and FSS.
2. Preliminary market research should be performed before new requirements are fully developed and more conducted substantially once a requirement has been defined, before the issuance of a solicitation. (See FAR 10.001(a)(2)(i).) Effective research will determine the availability of suitable commercial items to satisfy agency needs, provide valuable product and industry information, and identify existing, desirable systems and technology. Market research is also required before soliciting any offers above the SAT, as well as for requirements below the SAT when adequate information is not available and the cost of research is justified.
3. Market research analysis serves to initiate industry involvement, develop and refine the procurement strategy, obtain price information, determine whether commercial items exist, determine the level of competition, identify market practices, or obtain comments on requirements. The ultimate objective of market research is to arrive at the most suitable approach to acquiring goods and services. A well-executed market research process will provide reliable information on existing products and services, capable vendors, competitive market forces, commercial practices, varying levels of

product performance, and quality and successful acquisition practices of other organizations. The magnitude and degree of formality of the market analysis should be proportionate to the contemplated procurement. All market analyses, formal or informal, should be appropriately documented.

D. Benefits of Market Research

The benefits of market research include the following:

1. Identification of commercial products and services that meet Government requirements;
2. Identification of competition and small business concerns (including all subcategories of small business) that can meet Government requirements and contribute to cost savings or cost avoidance and achievement of NRC small business program goals; and
3. Fostering and promoting acquisition planning and strategic sourcing for NRC procurements.

E. The COR Role in Market Research

The COR, in conjunction with the CS, performs market research to determine if the requirement—

1. Duplicates current agency contracts.
2. Can be met through GSA/Government stock (supply item).
3. Can be met through use of a mandatory source (UNICOR/Committee for Purchase From People Who Are Blind or Severely Disabled (also known as NISH)).
4. Can be procured through the GSA schedule.
5. Is an 8(a) or HUBZone item or a sole source procurement.
6. Can be fulfilled through use of another agency's GWAC or a multiple award schedule contract.
7. Can be met by a commercial item or service on the open market.
8. Can be met by a noncommercial item on the open market.
9. Requires more extensive market research because of its complexity.

F. Formal Market Research

Formal market research is accomplished through the following approaches:

(1) contacting knowledgeable people, (2) reviewing the results of recent market research for the same or similar items, (3) obtaining information by the Internet, (4) using the Dynamic Small Business Search (DSBS), (5) obtaining sources from other contracting offices, or (6) reviewing catalogs. (See DSBS registration information below.)

1. SBP maintains a list of sources with different capabilities that are available to do business with the NRC.
2. The CS may issue a sources sought notice or request for information (RFI) to solicit information or interest from potential vendors for a Government requirement.
3. Once market research has been completed, the Government should have a better idea about industry capabilities, qualified vendors, applicability of small business set-asides, competition requirements, and availability of Government contracts for use. The individual conducting the market research should summarize the activities in writing in a manner appropriate to the size and complexity of the acquisition and place the summary in the contract file.
4. Note: To register in the DSBS, vendors must first complete their SAM registration and be classified as a small business under the SBA's size standards. Once SAM registration is completed on the SAM Web site at <https://www.sam.gov/portal/public/SAM>, a link to the SBA's supplemental page will be displayed on the screen. Clicking this link takes the vendors to the page where they may enter their firm's information which then populates into the SBA Dynamic Small Business Search.

VIII. REQUISITION PHASE

A. Introduction

1. The requirement office prepares the requisition and submits it to AMD. The requisition package may include the SOW; IGCE; JOFOC, if appropriate; and approvals, security forms, market research, funding, suggested sources, a list of SEP nominations and procurement officials, and suggested evaluation criteria.
2. If the cost of the requirement is estimated above the dollar threshold amount established for SSG approval, an approved SSG form is required.

B. Statement of Work (SOW)

Note: See the standardized SOW templates available in the NEAT Libraries.

1. General

- (a) The SOW is the portion of the requisition package that describes the overall technical requirements and provides prospective contractors with the essential information needed to prepare proposals. It describes—
 - (i) Introductory and background material,
 - (ii) The tasks to be performed,
 - (iii) The items or equipment to be acquired,
 - (iv) The criteria or performance standards the NRC will use to determine that the requirements of the SOW have been met, and
 - (v) The products or services to be delivered under the contract.
- (b) The SOW should contain discussions of technical problems and technical guidelines. It should also include research references, related information, and other data that, in the judgment of the requirement office, will help offerors in preparing technical proposals. When issued in a solicitation, the information presented in the SOW may affect the number of qualified prospective contractors willing and able to respond. If the SOW is not sufficiently definitive, some prospective contractors may not submit a proposal either because of uncertainty about the risks involved or because they do not understand if the requirements relate to their capabilities. If the SOW is too restrictive, contractors who are actually qualified to perform the Government's requirements may not respond.
- (c) The clarity and definition of requirements presented in a properly drafted SOW will usually result in the submission of a well-conceived proposal, reduce the time and cost of proposal preparation, and facilitate agency evaluation of proposals. Failure to specify exactly what the requirement office desires may encourage offerors to build in inflated cost contingencies or to underestimate or overestimate costs. The SOW should be described in terms of functional or performance characteristics and establish the contractor and Government roles and responsibilities.
- (d) After a contract has been awarded, the requirements set forth in the SOW constitute the definitive standard for measuring the contractor's performance. The SOW serves as the foundation of every contract. All other elements of a contract evolve around it, are affected by it, or are dependent on it. Problems during contract performance are often traceable to the approach, terminology, and content of the SOW. Regardless of other communication between the agency

and the contractor as the work progresses, the parties must look to the language of the SOW as the final determinant of scope, responsibilities, and obligations.

- (e) The type of contract negotiated also relates to the requirements of the SOW. Generally, if the requirement office describes the technical requirements of the proposed work in detail and adequately understands time and cost factors, a fixed-price type of contract may be feasible. On the other hand, if the performance, time, and cost factors are uncertain, a cost-reimbursement type of contract may be the only viable alternative.

2. Performance Work Statement (PWS)

- (a) A PWS shall be used to the maximum extent possible. A performance-based work statement emphasizes the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes as opposed to either how the work is to be performed (i.e., performance specifications) or broad and imprecise work statements. This approach ensures that the required performance is achieved and that total payment is related to the degree services performed meet contract standards.
- (b) A PWS may be developed by using a work breakdown structure (WBS). A WBS is used to break down the project into smaller, more manageable components (i.e., tasks). A WBS requires identifying major tasks (and subtasks) to achieve project objectives; estimating their costs, delivery dates, or performance schedules; and identifying those persons responsible for accomplishing the work.
- (c) A PWS contains—
 - (i) Requirements described in results required rather than the methods of performance of the work; and
 - (ii) Measurable performance standards (i.e., terms of quality, timeliness, quantity) used to assess work performance.

3. Deliverables

- (a) The SOW should itemize reports, documentation, and other deliverable end products, together with a delivery schedule and performance milestones, as applicable. Due dates (e.g., review and approval of draft documents, acceptance testing of deliverables, or GFP) for any NRC-required actions should be included.
- (b) If the deliverable or end product of the contract is a written report, the SOW should specify qualitative standards for the document, the required delivery date, and the format of the report. If the report is to be published in the NRC's NUREG series, the camera-ready copy must comply with the policy found in MD 3.7, "NUREG-Series Publications." The SOW should also require the contractor to supply a manuscript and compact disc of the report using the type of software

specified in the contract. Although qualitative standards may be difficult to prescribe in advance, the ultimate use of contract reports may be indicated by the following: "The final report must be in such detail that operating laboratories and bench level scientists and engineers can obtain useful technical guidance."

- (c) The SOW clearly prescribes the essential elements of subject matter required in progress, interim, special, and final reports. Describe the hard copy or electronic format and distribution requirements.

4. Acceptance Criteria

The SOW should establish standards of acceptability for the products or services being procured by the agency to ensure that the contractor's performance complies with contract requirements and yields the intended results.

5. Meetings and Travel

The SOW should allude to the need for travel and general information regarding the nature of the trips required. The requirement office should identify necessary domestic and foreign travel, including destination, purpose of each meeting or trip, number of people necessary, and estimated length of time.

6. NRC Furnished Material and Equipment

The SOW should identify specific reports, journals, documents, equipment, or other items that the NRC will provide to the contractor.

7. Additional Guidance and References

- (a) When technical information must be included in the SOW, including theoretical discussions, scientific explanations or guidance, direction, and methodology, segregate instructions on this material so that clear boundaries exist between the why, the what, and the how of the proposed work.

- (b) List by full title, author, publisher, and date all guidance documents that have immediate relevance to technical performance and explain their applicability and availability. Advise the prospective contractor of where and how to obtain any mandatory reference material and other sources of information, or include this material in the solicitation. Materials related to the procurement may be attached to the requisition for inclusion in the solicitation.

8. Drafting the SOW

- (a) The development of the SOW is a joint responsibility of the requirement office and AMD. Great care should be exercised by all who participate in preparing and reviewing the SOW to ensure that it states exactly what is needed and avoids contradictions and inconsistencies.

- (b) Use illustrations including diagrams and tables to show detail that is difficult to describe in words. Ensure that FAR regulations and agency regulations (e.g., NRCAR) and policies have been considered in preparing the SOW. Consulting with AMD and your office colleagues early when drafting the SOW is recommended.
- (c) AMD has developed a number of SOW templates to increase standardization and consistency within the agency, which should be used to the maximum extent practicable. (See the standardized templates in the NEAT Libraries.)

9. Statement of Work Components

(a) Statement of Work Specifications

- (i) The specification is the part of the SOW that describes the essential technical requirements for items, materials, or services, including criteria for determining that the requirements have been met. Specifications should not be restrictive and should be designed to promote full and open competition about the nature of the supplies or services to be acquired. Determine what types of specifications will be used: for example, design, functional, performance, or a combination of these types of specifications. Each is described below:
 - Design specifications set forth precise measurements, tolerances, materials, in-process and finished product tests, quality control measures, inspection requirements, and other specific information. They are used when the technical requirements are definite and can be communicated clearly to potential offerors. Design specifications permit award solely by price and price-related factors, since no flexibility is allowed, and all responsive bids are, therefore, design-identical.
 - Functional specifications describe work to be performed with a clear end purpose rather than the way in which the work is to be performed. They are broader than performance specifications and are aimed at permitting more competition.
 - Performance-based specifications provide the technical requirements that set forth the operational characteristics desired for an item. They state what the final product will be capable of accomplishing rather than describing how a product should be designed.
- (ii) Specifications should be listed in order of preferred usage. Performance-based specifications are preferred over functional and design specifications.

(b) Statement of Work Style

- (i) Arrange ideas in an orderly fashion, keep sentences as short and concise as possible, use proper punctuation, and use the active voice for greater emphasis.
- (ii) Avoid redundancy, contradictions, ambiguities, duplication, and overlap.
- (iii) Identify tasks and subtasks and arrange them in performance sequence.
- (iv) Use language that clearly states the exact intent of the NRC; a reader should not have to search for meaning and interpretation. Consistency in terminology is critical. Evaluate the SOW for clarity, precision, and completeness. Consider the following basic questions:
 - What needs to be done (in minimum contract requirements)?
 - When (and sometimes where) must it be done?
 - What level of Government monitoring is needed?
 - What types of quality control are needed by the contractor to assure quality goods or services?
 - How will the Government know if goods or services meet contract requirements (i.e., performance quality standards)?
 - What is the minimum level of Government approvals and reporting needed?
 - Are there any unnecessary requirements that may impede competition or drive up cost?
 - What must the final output be?
 - How will the final output be inspected and accepted?
- (v) Avoid or eliminate all material that is not essential for describing the work required, that may add to the ultimate cost of the work, or that may detract from the actual requirement. While the SOW should be complete, the SOW should not be used as a catchall for special terms and conditions under the contract. These requirements should be listed separately in the requisition package.
- (vi) In SOWs and contracts, the NRC uses the word “shall” to require the contractor to do something and is used to impose a duty on the contractor. The term “will” is used to represent a future promise on the part of the Government.

(c) Statement of Work Review

A detailed review of the draft SOW by the requirement office is critical to developing an effective SOW. Sufficient time should be allowed for a critical reading of the draft to detect errors or lack of clarity.

(d) Green Purchasing

Note: This information is to be incorporated into the SOW to the maximum extent possible. (See NRC's Green Purchasing Plan.)

(i) The CS must review the SOW with the COR to determine the applicability of environmental laws and regulations. Considerable effort should be made to maximize use of green products or services. The CO may encourage or require potential contractors (offerors) in solicitations to propose integrated environmental approaches when proposing solutions to Government needs. These programs can be taken into account when evaluating an offeror's proposal in determining best value.

(ii) Categories of Green Products and Services

Below are categories of green products and services that constitute the green purchasing program. This program continues to evolve, and items are continually added, especially the U.S. Department of Agriculture (USDA) biobased products and U.S. Environmental Protection Agency (EPA)-designated items.

- Designated Recycled Content Products (EPA program);
- Energy Star®, Federal Emergency Management Program (FEMP) Designated Energy Efficient Products and Appliances, and Low Standby Power (DOE and EPA);
- Biobased Products (USDA program);
- Environmentally Preferable Products and Services (EPA program);
- EPA Electronic Product Environmental Assessment Tool (EPEAT) Registered Products (EPA program);
- WaterSense or Other Water Efficient Products (EPA program);
- Products Containing Non- or Lower-Ozone Depleting Substances, including Significant New Alternatives Policy (SNAP) (EPA program); and
- Products Containing Non- or Lower-Toxic or Hazardous Constituents (EPA program).

(e) Identified Performance Level or Performance Specifications

- (i) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.
- (ii) During procurement planning, the COR and CS must review and address the following areas:
 - Identify green products required in the performance of the SOW or opportunities for greening the contract or the order while maintaining the integrity of the work.
 - Include appropriate solicitation language, FAR, and NRC clauses.
 - Include relevant EPA-designated items, if any, that meet or exceed EPA's recommended recycled content percentages, unless there is written justification included in the contract file.
 - Include relevant USDA-designated biobased products, if any.
- (iii) All appropriate solicitations and resulting contracts must include language notifying vendors that the NRC reserves the right to substitute or add designated recycled content products (i.e., Comprehensive Procurement Guidelines products list), EPEAT-registered products, Energy Star® and FEMP-designated efficient products and appliances, USDA-designated biobased products (BioPreferred items), environmentally preferable products, WaterSense and other water efficient products, products containing non- or lower-ozone depleting substances (SNAP), and products containing no or low toxic or hazardous constituents (e.g., non-volatile organic compounds paint), if they become available during the course of the contract.
- (iv) Include appropriate NRC clauses in contracts and orders.

(f) Procuring Electronic and Information Technology (EIT) for Individuals with Disabilities

Note: This information is to be incorporated in the SOW to the maximum extent possible.

(See the following FAR sections for EIT-related information: FAR 7.103(q), 10.001(a)(3)(vii), 11.002(f), 12.202(d), 39.203(c)(2), and 39.204(e)(2).)

- (i) Section 508 of the Rehabilitation Act, as amended (29 U.S.C. 794d), is required, unless certain exceptions apply at FAR 39.204, when Federal agencies develop, procure, maintain, or use EIT products or services.

- (ii) Federal employees with disabilities have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities.
- (iii) Members of the public with disabilities seeking information or services from an agency have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

Section 508 directed the Architectural and Transportation Barriers Compliance Board to develop and publish EIT Accessibility Standards (36 CFR Part 1194). Section 508 and the EIT accessibility standards are implemented by the FAR. (See 48 CFR Subpart 39.2.)

- (iv) EIT includes “information technology” and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to, telecommunications products (e.g., telephones), information kiosks and transaction machines, World Wide Web sites, multimedia, and office equipment including copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, information technology is not heating, ventilation, and air conditioning equipment, including thermostats or temperature control devices, or medical equipment where information technology is integral to its operation. (See 36 CFR Subpart 1194.4.)
- (v) Note: Task and delivery orders for EIT include those issued against NRC's EWCs, as well as FSS contracts, GWACs, and MACs. These requirements are applicable to—
 - Contracts for EIT deliverables,
 - Task and delivery orders for EIT deliverables, and
 - Orders of any value for which a Purchase Card is used.
- (vi) The applicable technical standards and functional performance criteria for EIT procurements are available at <http://www.section508.gov>. The technical standards and functional performance criteria cover acquisition of software applications and operating systems; Web-based intranet and Internet applications; telecommunication products; video and multimedia products; self-contained, closed products; and desktop and portable computers. Note:

EIT deliverables that are documents and reports that may be published on a Web site are also included.

- (vii) When procuring a product, the NRC shall procure products which comply with the provisions of the EIT accessibility standards when these products are available in the commercial marketplace or when these products are developed in response to a Government solicitation. If commercially available products meet some but not all of the standards, the NRC must procure the product that best meets the standards. (See 36 CFR Part 1194.2(b).)
 - (viii) Exceptions specified by Section 508 EIT accessibility standards include—
 - EIT for a national security system as defined in Section 11103(a) of Title 40;
 - EIT that is acquired by a contractor incidental to a contract;
 - EIT located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment; and
 - EIT that would impose an undue burden on the agency under FAR 39.202 and 39.204(e). Independent Government Cost Estimate (IGCE).
10. An IGCE must be developed when the work to be procured exceeds the SAT, unless otherwise required by the CO, except for the following:
- (a) Modifications exercising priced options,
 - (b) Incremental funding, and
 - (c) Commercial items.
11. The “Acquisition Guidebook for CORs” and IGCE templates provide general guidance when developing cost estimates and are available in the NEAT Libraries.
12. The IGCE should reflect how the estimate was derived by delineating costs, including costs for labor categories, consultants, travel, equipment, supplies, and indirect costs. Any previous cost history that the NRC has had in acquiring the same or similar goods or services should be provided with the IGCE. Also attach any assumptions that form the basis for cost estimates including labor escalations in subsequent periods.
13. The IGCE should be realistic and as accurate as possible in order for the CS to use it as a source of comparison to proposed prices. Completed cost estimates for proposed contractual actions must be transmitted as an attachment to the requisition package.

14. NRC cost estimates are for Government use only; therefore, they may not be revealed to a potential contractor. For procurements less than the simplified acquisition threshold, an estimate must be developed in a level of detail commensurate with the complexity of the procurement. This estimate is retained in the requirement office's files. The COR should discuss the details of any cost estimate with the CS. The CO may provide a potential offeror(s) with cost-type information that may serve to improve the overall quality of proposals, such as estimated labor hours, labor mix, and/or dollar range of the procurement.

C. Approvals and Coordination

In addition to approvals including JOFOC, the requisition must be approved by the DO. The DO's signature certifies that the proposed procurement is an appropriate requirement.

D. Certification of Funds

1. A requisition must contain reasonable assurance that the requirement office will make available necessary funding before or at the time of contract award, to cover a project's estimated cost. Either full or partial funding is required depending on the nature and type of contract and must include a certification of funds by a funds certifying official. In the case of multi-year contract, only assurance of funding for the first year is required plus a cancellation fee.
2. If the COR lacks sufficient funding during the requisition planning phase, the CO may proceed with the solicitation process and include a clause indicating that the procurement is "Subject to the Availability of Funds."

E. Presolicitation Exchanges with Industry

1. Exchanges of information are encouraged among all interested parties from the earliest identification of a requirement through issuance of the solicitation. Any exchange of information must be consistent with procurement integrity requirements. Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition. The NRC has posted a Vendor Communication Plan on its external Web site at <http://pbadupws.nrc.gov/docs/ML1123/ML11230A042.pdf> to explain how it interacts with contractors at various stages, including the early stages of concept development through the pre-solicitation and preaward phases of procurement.
2. The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities. This allows potential offerors to judge whether or how they can satisfy the Government's requirements and enhance the Government's ability to obtain quality supplies and services at reasonable prices

and increase efficiency in proposal preparation and evaluation, negotiation, and contract award.

3. Early information exchanges can be accomplished through conferences, market research, one-on-one meetings, presolicitation notices, draft solicitation, a presolicitation or preproposal conference, and site visits.

F. Source Evaluation Panel (SEP) Nominations

A list of suggested SEP members nominated by the DO must accompany the requisition when applicable.

G. Receipt and Review of the Requisition Package by the Acquisition Management Division (AMD)

1. Upon receipt of the requisition package, AMD will transmit a copy of the requisition and the SOW to SBP. By its review, SBP will make set-aside recommendations and identify qualified potential small business firms.
2. The CO and the CS examine the SOW for overall sufficiency, the extent to which the SOW is consistent with the procurement objectives, whether or not the SOW can support the recommended contract type, and whether or not the SOW will produce the expected results. The CS also analyzes the breakdown of the work items to be completed and the associated preliminary cost estimates to accomplish this work (as outlined in the IGCE). The CS resolves any questions or problems with the COR or others responsible for the SOW.
3. Once AMD receives the requisition package, the CS reviews the requisition and meets with the COR, or in the case of negotiated procurements, the SEP, to discuss and reach final agreement on the components of the requisition package. These components, which contribute to the development of the solicitation, are the sources list, the SOW, evaluation criteria, the IGCE, market research, security access form, justifications and approvals, GFP, and the proposal presentation and format. The CS, the COR, and the SEP will also discuss streamlining initiatives and develop a milestone schedule to establish completion dates for each aspect of the procurement process.

IX. DETERMINING TYPE OF CONTRACT

A. General

1. A contract is a binding agreement between two or more parties. Government contracts are primarily structured according to the degree of risk and certainty of need by which the risks and rewards of a specific job are allocated. The most fundamental difference between contracts is whether they are a fixed-price type of contract or a cost-reimbursement type of contract.
2. The CO and COR discuss the rationale for the selection of the contract type appropriate for meeting the agency's minimum requirements. This discussion includes Government risk and the agency resources necessary to effectively manage this risk, especially for contracts other than fixed price.
3. The following factors are considered in selecting the type of contract:
 - (a) Nature and complexity of the item or services required;
 - (b) Stability of the technology;
 - (c) Urgency of the requirement;
 - (d) Degree to which the Government understands the external variables affecting contractor performance;
 - (e) Contract performance period and the agency's quantitative requirements under the procurement;
 - (f) Quality requirements;
 - (g) Degree of competition anticipated;
 - (h) Small business cash flow considerations;
 - (i) Difficulty of accurately estimating the contractor's costs;
 - (j) Availability of comparative data with which to evaluate the successful contractor's offer;
 - (k) Contractor's capability, corporate experience, and relevant past performance;
 - (l) The agency's prior experience with the contractor;
 - (m) Acquisition history;
 - (n) Degree of the agency's risk;
 - (o) Extent and nature of the subcontracting contemplated by the contractor;
 - (p) Degree of risk involved for the contractor;

- (q) Nature of the contractor's accounting system;
- (r) Administrative costs to both parties generated by various contract types;
- (s) Agency need for information on the contractor's actual cost of performance, which is necessary to estimate the price of follow-on procurements;
- (t) Trends;
- (u) Availability of supplies or services in the marketplace; and
- (v) Pass-through requirements.

B. Fixed-Price Contracts

The fixed-price contract binds the contractor to complete the work for either a firm-fixed-price or a fixed-price subject to predetermined adjustments. Acquisition of commercial items or services is accomplished using a fixed-price contract.

1. Basic Structure

- (a) The agency must design and administer the contract in a way to avoid claims for unforeseen work and costs. If the SOW and the contract are well written to eliminate ambiguities and administered properly, the contractor bears the cost risk. The contractor also has greater opportunity for higher profits by efficiently performing the contract. If the contractor can complete the work at a cost below the negotiated cost, the contractor gains. If there is a cost overrun, the contractor must complete the work and absorb any overrun.
- (b) A firm-fixed-price contract provides for a price that, absent change orders and certain other administrative actions, is not subject to any adjustment by reason of the actual cost incurred by the contractor in the performance of the contract, thus placing maximum risk on the contractor. This type of contract imposes a minimal administrative burden on the contracting parties (i.e., cost reporting and audits are not required during the contract period of performance and closeout).
- (c) In addition to a firm-fixed-price for the work performed, the price may be fixed by using a contract with unit pricing. Unit prices are preset for units of equipment or supplies, or a definable segment of service. This type of contract may be used when the item or unit of service can be clearly defined, but the quantity is not as well defined. A firm-fixed-price contract shall be fully funded at the time of award. However, contract options or optional services shall be funded at the time they are exercised using current FY funds.

2. Adjustments

- (a) The CS may recommend a predetermined adjustment variation of a fixed-price contract for use when the work can be well defined, but it would be unwise to

place the entire cost risk on the contractor. The primary reason for using an adjustment is to allow for economic uncertainty. If procurement costs are uncertain at first but experience may make a firm price possible later, a fixed-price redeterminable contract may be used. In another fixed-price situation, if market conditions make material prices and labor rates uncertain, escalation or de-escalation may be used to adjust for price changes as they occur.

- (b) To ensure that the contractor has a fair and reasonable incentive and that the contractor assumes an appropriate share of the risk, the CS may recommend that a fixed-price incentive contract be used. Firm or successive target costs, profits, a profit adjustment formula, and a ceiling price are negotiated in the contract and used to monitor performance under the contract. Although this contract structure permits a final fee to be determined by performance, the cost of administration of this type of contract usually outweighs the benefits in the fixed-price situation.

C. Cost-Reimbursement Contracts

The cost-reimbursement type of contract is used when the nature of the work makes it difficult for the agency to develop a reliable cost estimate. A cost-reimbursement type contract provides for payment to the contractor of allowable costs incurred in the performance of the contract to the extent prescribed in the contract. This type of contract is often used for procuring research and most technical assistance work. The cost risks generally are taken by the agency, especially under the basic cost-plus-fixed-fee contract (CPFF). To share the cost risks with the contractor, the CS may recommend one of several basic variations of a cost-reimbursement contract.

1. Cost Contract

A cost contract is a cost-reimbursement type contract in which the contractor receives no fee but is reimbursed for all its allowable, allocable costs in the performance of a contract. If the procurement offers the contractor certain benefits beyond the immediate contract, the contractor may be willing to take on the work without fee or for a share of the costs. This type of contract is used most often for work performed by universities.

2. Cost-Sharing Contracts

A cost-sharing contract is one which the contractor receives no fee but is reimbursed only for an agreed portion of the contract's allowable costs. Cost-sharing contracts are used in situations in which both parties have an interest in the project.

3. Cost-Plus-Fixed-Fee (CPFF) Contracts

A CPFF is a type of cost contract that provides for the payment of a fixed-fee to the contractor. The fixed-fee, once negotiated, does not vary with actual cost but may be

adjusted as a result of any subsequent changes in the work or services to be performed. A description of two types of CPFF contracts is as follows:

- (a) A term contract is a form of CPFF contract in which the contractor's obligation is stated in a specified level of effort for a stated period of time. The contractor earns the fixed-fee when the level of effort has been completed without regard to whether the contractor completed the work.
- (b) A completion contract is a form of CPFF contract in which the contractor's obligation is stated in a definite goal or target with a specified end product. The fixed-fee is earned by the contractor only after the end result is accomplished.

D. Other Types of Contracts

There are other types of contracts that cannot be categorized as strictly fixed-price or cost-reimbursement. They are to be used sparingly and with a justification as to why they are being used. A discussion of these contracts follows:

1. Labor-Hour Contract

Under a labor-hour contract, a fixed-price is paid for each hour of work performed by specified classes of labor. This type of contract may be used when the only costs are for labor and when it is not possible to accurately estimate the extent or duration of the work.

2. Time-and-Materials Contract

Under a time-and-materials (T&M) contract, direct labor hours are fixed at rates that include wages, overhead, general and administrative expenses, and profits for procurements of property or services. Materials are reimbursed at cost, including any appropriate handling charge. A ceiling is placed on total expenditures. This type of contract may be used when it is not possible to accurately estimate the extent or duration of the work, but it shifts entire risk to the Government.

3. Letter Contract

A letter contract serves as a preliminary agreement for getting work underway while a definitive contract is negotiated. The primary disadvantage of using a letter contract is the risk of errors, as the process is accelerated to place the initial letter contract and the loss of some leverage for successfully completing final negotiations because the contractor has incurred project costs. For these reasons, the CS will employ the letter contract mechanism only in very limited circumstances when approved by procurement management.

4. Sealed Bidding

Sealed bidding is seldom used at the NRC. It is a method of contracting that employs competitive bids and provides for public opening of bids. The solicitation is called an

invitation for bids (IFB) and describes the Government requirements in a clear, accurate, and complete manner. Sealed bidding avoids use of unnecessarily restrictive specifications or requirements, as this tends to unduly limit the number of bidders. Sealed bidding does not allow for contract discussions, so requirements must be exact. Award is made to the responsible bidder whose bid, conforming to the IFB, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation, which is known as lowest price technically acceptable (LPTA). (See FAR 15.101-2.)

5. Indefinite Delivery Contracts, Including Task Ordering Contract/Multiple Award Task Order Contract

(a) General

These types of contracts are used when the agency is uncertain about the total needs or timing of the requirement.

(b) Types of Contracts

This type of contract is used when a recurring demand exists for supplies or services, but the timing and/or the full extent of the demands are uncertain. The contract establishes all the known terms; however, orders for the item are not placed until the need arises. Because of the obligations of both parties, the requirement office must realistically estimate quantities and identify all items and offices to be served. There are three more specific types of contracts within this type of contract:

(i) Indefinite Quantity Contract

This type of contract provides for the procurement of an indefinite quantity of specific supplies or services with stated minimum and maximum ordering limits. The agency also establishes a minimum guarantee for more than a nominal quantity. The contractor is legally bound to meet all orders up to the maximum. The contractor, in exchange for this obligation, is entitled to the minimum guarantee amount, even if the agency does not order the minimum quantity.

(ii) Requirements Contract

This type of contract provides for the procurement of all specific supplies or services for the stated offices within a stated period of time. The contractor is bound without a funded minimum in exchange for the agency's obligation to buy all specific supplies or services from that contractor. The requirement office and the CS must take care to ensure that there are no overlapping contracts because a contractor with a requirements contract is entitled to payment, whenever the agency office places an order.

(iii) Definite Quantity Contract

This type of contract is appropriate when the agency is certain of a definite quantity of specified supplies or services but needs to state a delivery at a later date within the contract period.

(c) Task Ordering Contract/Multiple-Award Task Order Contract

This type of ordering contract is used when there is certainty that the agency will have the need for repetitively ordering work, but the timing of the orders cannot be set and the work to be ordered cannot be stated in exact terms. A basic contract is negotiated, incorporating as many terms and conditions as possible, including negotiated unit price or costs and indirect rates. When work is identified, IDC awardees are afforded a fair opportunity to be considered for the work asked for in a proposal. A task order is then placed with the winning firm. Work must be within the scope (i.e., total dollar ceiling of EWCs and SOW) of the IDC, and orders are submitted to AMD for processing.

(i) The FAR authorizes a uniform approach to competitively award indefinite delivery, indefinite quantity, multiple award task order contracts to two or more contractors as a result of a single solicitation. This type of contract allows:

- Competition for task orders or delivery orders among those known qualified contractors (awardees) who have been determined to be free of conflict of interest (COI) situations.
- The award of task orders using streamlined mini-competitions among the firms holding the underlying basic contracts.
- Competition to be held without delay and involving less documentation typical of ordinary competitions while using the advantage of competition to obtain optimum prices.
- Mini-competitions to be limited to a small number of easily evaluated criteria.
- The NRC to maintain more than one source and helps to ensure that a reasonable price is paid for the completion of each task order.
- Immediate access to alternate vendors should a COI problem exist for a proposed task under one or more of the other multiple award contracts.

(ii) FAR 16.504(c) states a preference for making multiple awards of indefinite quantity contracts under a single solicitation to two or more sources except for advisory and assistance services. The CS can provide further details on the use of this mechanism.

- (iii) FAR 19.502-4(c) authorizes the COs to set aside any orders placed under a multiple-award contract to small business concerns identified in FAR Part 19.000(a)(3).
- (d) EWC is an IDC or agreement for a specified scope of products or services that is awarded to one or more sources to meet agency requirements on an ongoing basis. As specific NRC office needs are identified, one or more orders will be issued against the contract (e.g., task order, delivery order, work order, call order, purchase order, etc.) according to the procedures specified in the EWC. The use of EWCs is warranted when acquiring products or services required across multiple agency offices or where significant quantities are required over time. In developing a sourcing strategy for a procurement, acquisition teams should consider the use of available EWCs in order to gain efficiencies and cost savings. The following are examples of where the NRC has made use of EWCs: office supplies, secretarial services, technical editing, information technology system development, software licensing, and environmental reviews.
- (e) For agency-specific procedures governing award of task or delivery orders under multiple award IDCs, see NRC's "Standard Ordering Procedures for Issuing Task and Delivery Orders Under Open Market Indefinite Delivery Contracts (IDC) Awarded by the Nuclear Regulatory Commission." (See the NEAT Libraries.)

6. Fee Arrangements to Promote Performance

The following fee arrangements may be used to promote performance in specific circumstances:

- (a) An award-fee contract is used when it is desirable for the agency to determine a profit after periods of performance (typically on a semi-annual basis) against a predetermined award-fee plan to motivate the contractor toward exceptional performance because the total extent of the work (cost, schedule, and performance) cannot be accurately projected.
- (b) An award-fee plan establishes award-fee levels based on the contractor's overall cost, schedule, and technical performance, as measured against contract requirements. The contract consists of a fixed base fee amount, if applicable, and an award-fee amount based on contractor performance that must be earned during the contract period. (See FAR 16.401(e) and 16.405-2.)
- (c) An incentive fee contract provides an incentive to encourage the contractor to make a special effort either by meeting predetermined performance factors or by the agency's appraisal of the contractor. The cost-reimbursement contract provides for the initially negotiated fee to be adjusted later by a formula based on total allowable costs compared to total target costs. (See FAR 16.405-1.)

- (d) A performance-based service contract includes procedures for reducing the fee under a CPFF contract or a reduction to the price of a fixed-price contract when services are not performed or do not meet other contractual requirements. (See FAR 46.407.)

X. ADVERTISING PHASE

A. Determining Sources to be Solicited

The selection of solicitation sources is a critical step in the procurement process. Successful contract performance depends largely on the solicitation of potential responsible sources by one or a combination of methods described below.

B. Sources Recommended by the Requirement Office

The requirement office is encouraged to attach a recommended list of sources (company name, address, and telephone number) to the requisition for the solicitation.

Recommendations should be made by capability of physical resources and staff personnel, past performance or experience in a given service area or with a particular item or product line, and available capacity. The CO may add to the list of recommended sources on the requisition.

C. Advertising Through FedBizOpps

1. The FAR requires Federal agencies to publicize contract opportunities and proposed contract actions to increase competition, broaden industry participation, and help the small business community, unless an exception at FAR 5.202 applies. (See FAR Subparts 5.1 through 5.3.)
2. Advertising contracting opportunities provides industry with information concerning current Government contracting and subcontracting needs. The FBO Web site at <https://www.fedbizopps.gov> or <https://www.fbo.gov> is the single point of electronic public access to Governmentwide procurement opportunities. FBO is an effective method for adding to the competitive base in Federal procurement because it is a comprehensive and timely way to publicize procurement information. Generally, an agency announces its requirement in FBO as a notice that identifies the requirement and an anticipated issue date for the solicitation.
3. Unless the procurement is exempted from the requirement for a public notice, any proposed competitive procurement is required to be advertised online in FBO and, when appropriate, in trade journals if the open market procurement is greater than \$25,000.
4. The CS prepares the FBO notice with help from the requirement office. The FBO notice must clearly describe the requirement and all important details, including

locations, options, timeframes, and desired areas of expertise. It should state the issue date for the solicitation or invitation for bid as a specific calendar date. The notice must be published 15 days before issuance of a solicitation, except for acquisition of commercial items.

5. Information regarding preparation and transmittal of an FBO notice may be found in FAR 5.207.

D. Bidders List

The FAR requires that the agency acquisition office maintain a list of potential sources for procuring activities unless electronic commerce methods are used that transmit solicitations or notices of procurement opportunities automatically to all interested sources. The NRC does not maintain an agency bidders list since all competitive solicitations are transmitted through FBO. In FBO, COs may activate the “Interested Vendors List” under solicitations to permit vendors to enter their contact information. Vendors are able to register on FBO to automatically receive notices and solicitations issued by Federal agencies for North American Industry Classification System code procurements of their choice.

E. Sources-Sought Notice

1. If the CO or the requirement office wishes to determine whether other sources are available for a requirement, the requirement office and the CS jointly prepare a sources-sought notice, which is placed in FBO. This notice includes a description of the requirement and invites interested sources to identify their ability to carry out the requirement.
2. Sources-sought notices must be titled, for example, “Research and Development Sources Sought,” and include the name and telephone number of the CO or the CS from whom technical details of the project can be obtained. The notice may include a statement explaining why the NRC believes only one source is available. The sources-sought notice enables potential sources to learn of programs and provides an opportunity for sources to submit information that will permit agency evaluation of their capabilities.
3. Potential sources responding to a sources-sought notice will be added to the appropriate solicitation mailing list for subsequent solicitation. The CO must advertise all subsequent solicitations for this requirement unless one of the exceptions in FAR 5.202 applies. The CO or the CS may solicit input from SBP when developing these notices.

XI. SOLICITATION PHASE

A. Introduction

The solicitation provides the offeror with the information needed to understand and respond to an NRC requirement. The type of solicitation for purchases surpassing the SAT is an RFP for negotiated procurement.

B. Determinations Before Development of a Solicitation

Before the development of the solicitation document, the CO and the CS will determine and finalize the following:

1. The SOW;
2. Contract type on the basis of the requirements;
3. "Acquisition strategy," which is the requirement office's overall plan for satisfying the agency need in the most effective, efficient, and least costly manner through awarding a contract using full-and-open competition, limited competition, other-than-full-and-open competition, or total or partial small business set-aside (i.e., large business sole source, 8(a) and HUBZone sole source (if only one qualified HUBZone), 8(a) set-aside, HUBZone set-aside, service-disabled, VOSB set-aside, WOSB set-aside, EDWOSB set-aside, or small business set-aside);
4. Small business subcontracting goals (as a percentage of total subcontracting dollars or total contract dollars);
5. List of GFP, if applicable;
6. Contractor access to NRC systems or facilities;
7. Proposal information and evaluation criteria; and
8. Acquisition streamlining initiatives to be employed.

C. Contents of the Solicitation

1. Much of the solicitation is standard. It includes—
 - (a) Part I, Schedule (price and cost forms, SOW, inspection and acceptance, deliveries and period of performance, contract administration data and special contract requirements) (Sections A through H);
 - (b) Part II, Contract Clauses (Section I);
 - (c) Part III, List of Documents and Attachments (Section J); and

- (d) Part IV, Representations and Instructions (representations and certifications of the offeror, instructions, conditions and notices to offeror, and evaluation factors for award) (Sections K through M). Note: The representations and certifications are included in the “System for Award Management” (SAM) database.
2. The unique features that require substantial attention are the SOW, evaluation factors, and proposal preparation information and instructions.
 3. In general, the solicitation should—
 - (a) Advise offerors of the time and place of any preproposal conference or site visits and the limitations that will be imposed on the number or qualifications of the attendees.
 - (b) State whether security clearances are necessary.
 - (c) Inform offerors of any special requirements or terms and conditions.
 - (d) Inform offerors about procedures for submitting written questions.
 - (e) Allow sufficient time for prospective proposers to review the solicitation and prepare offers.
 - (f) Include all required and special contract clauses.
 - (g) Include forms or format to be completed concerning cost estimates for the proposed work.
 4. The solicitation must specify a closing date for submission of proposals. The amount of time allowed for the preparation of proposals will vary depending on the nature of the project. Closing dates can have a significant effect on the procurement process. An early closing date may not provide sufficient time for offerors to prepare and submit proposals that are well thought out and may even discourage capable sources from competing. Although no one period of time can be specified for all procurements, usually 30 days is allowed from the issuance date of the solicitation.

D. Steps for Developing a Solicitation

The steps for developing a solicitation vary depending on the method of procurement. Solicitations for competitive and noncompetitive negotiated procurements are discussed below.

1. Competitive Negotiated Procurements

- (a) When using the competitive negotiated method of procurement, the CS develops the procurement milestone schedule and shares it with the SEP. The milestone

schedule serves as a planning tool and includes each step that must be accomplished to ensure timely award of a contract. The schedule is reviewed by the CO and approved by the requirement office.

- (b) Adherence to these milestone schedules is required to ensure that the contract is awarded in a timely manner. The CO should notify the requirement office of any significant delays or late procurements.
- (c) The COR, serving as the official representative of the requirement office, meets to discuss contract type and develops components of the solicitation document, the RFP (i.e., evaluation factors, security access, GFP, proposal preparation information and instructions, and the SOW).
- (d) The FBO notice is reviewed by the requirement office and issued by the CS.
- (e) After the CS has released the FBO announcement for publication, all details regarding the solicitation are resolved and the CS finalizes the solicitation.

2. Noncompetitive Negotiated Procurement

Noncompetitive negotiated procurements include 8(a) and HUBZone sole source (if only one qualified HUBZone exists) less than the amount set in FAR Part 19 as well as other than full and open procurements with approved justifications. The COR works with the CS to develop the milestone schedule; contract type; and the solicitation document (RFP), including proposal preparation information and instructions, SOW, quality standards, performance incentives or disincentives for results, and perhaps technical acceptability standards to ensure contractor capability to perform the work (“go/no-go” factor). An FBO notice is prepared by the CS with input from the requirement office, approved by the CO, and issued by the CS. The CS also finalizes the solicitation.

3. Instructions to Offerors

The solicitation package for the procurement method discussed above contains instructions to offerors describing how to compile the proposal, including separate cost and technical packages, and the required number of proposal copies. The offeror may be advised of streamlining initiatives and other instructions, which may include—

- (a) Limiting the number of pages in proposals to the maximum extent possible.
- (b) Prescribing the appropriate cost proposal format.
- (c) Submitting a contractor spending plan for cost-reimbursement contracts that have a performance period exceeding 6 months and are expected to be greater than the SAT.

- (d) Submitting the components of the technical and cost proposal (including labor hours and categories, materials, subcontracts, and travel) that are needed to evaluate the offeror's understanding of the scope of work.
- (e) Providing résumés for all professional or key personnel.
- (f) Setting a deadline for submission of offerers' questions.
- (g) Including a provision that any or all proposals will be rejected if the action is in the Government's interest.
- (h) Waiving informalities and minor irregularities in proposals received.
- (i) Stating the intention to evaluate proposals and award a contract without discussions with offerors. (The Government can reserve the right to seek proposal clarifications (e.g., capability issues as described in FAR 15.306(a) or minor or clerical errors as described in FAR 14.407) and hold communications as described in FAR 15.306(b). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government can reserve the right to conduct discussions if the CO later determines them to be necessary.)
- (j) Limiting the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. The solicitation must have notified offerors of this potential (FAR 52.215-1(f)(4)). (The CO may determine that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be achieved.)
- (k) Reserving the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.
- (l) Reserving the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.
- (m) Noting that exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.
- (n) Noting that the Government reserves the right to determine a proposal is unacceptable if the prices proposed are materially unbalanced between contract line item numbers (CLINs) or contract subline item numbers (SubCLINs). (Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more CLINs is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be

rejected if the CO determines that the lack of balance poses an unacceptable risk to the Government.)

- (o) Noting that a written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.
- (p) Requiring graphs, charts, and tables when they will facilitate evaluation of proposals.
- (q) The instructions usually inform all offerors (prospective contractors) that the NRC will solicit data from available sources concerning an offeror's past performance and will consider this information in its evaluation, in conjunction with past performance information or references solicited from offerors.
- (r) The solicitation package may also contain commercial product descriptions when necessary to satisfy the needs of the agency.
- (s) The solicitation may require oral presentations. (See FAR 15.102.)
- (t) When using the tradeoff best value acquisition technique, all evaluation factors and significant subfactors that will affect contract award and their relative importance must be clearly stated in the solicitation (i.e., technical factors are significantly more important than, approximately equal to, or significantly less important than cost or price).

E. Review and Approval of the Solicitation

After the solicitation package is complete, the COR should review it for completeness and accuracy. The package should inform potential offerors what the agency desires to procure, how an offeror is to submit a proposal, and how these proposals will be evaluated. The solicitation is also reviewed by the CS, the CO, and by OGC, if appropriate. Legal review ensures that the terms of the SOW clearly describe what the contractor and the agency are legally obligated to do.

F. Issuance of the Solicitation

1. After the CO has approved the release of the unclassified solicitation, it can be accessed through FBO.
2. AMD will issue the solicitation under information contained in the FBO notice. A brief announcement of proposed purchases may be made in newspapers and trade journals in compliance with FAR 5.101(b).

G. Cancellation of the Solicitation

All procurement actions initiated by the NRC are expected to result in the eventual award of a contract. However, it is inevitable that circumstances will sometimes necessitate a cancellation of the procurement request. If it is necessary to cancel a requisition for any reason during the procurement process, the DO cited on the requisition must submit a written request for cancellation to the AMD branch chief. The request must cite the reasons for this action. The CS will prepare a cancellation notice to be published in FBO.

XII. EVALUATION PHASE**A. Source Selection**

Source selection is the process of selecting a contractor through competitive negotiation. The objective of source selection is to select the proposal that represents the best value. Source selection procedures are designed to—

1. Maximize competition (e.g., by avoiding unnecessary quality standards where common industry standards exist, brand-name product or features, bundling, excessive proposal requirements).
2. Minimize the complexity of the solicitation, evaluation, and selection process.
3. Ensure the impartial and comprehensive evaluation of proposals, including discussions as necessary.
4. Ensure selection of the vendor whose proposal is most advantageous and realistic and whose performance is expected to best meet stated Government requirements.
5. Ensure no organizational or individual conflicts of interest exist or that they are mitigated. (See FAR Subpart 9.5 and NRCAR Parts 2009 and 2052.)
6. Ensure the proper conduct of a competitive negotiation through the collective judgments and cooperative efforts of technical, contracting, legal, and other personnel.

B. Source Selection Authority

The SSA is a term most often used when the selection authority is not the CO. The SSA is the Government official designated by the agency to direct the source selection process and make the selection decision. The SSA is often a representative of the program office (usually at a higher level in the agency). The SSA should be at a management level above the CO and technical officials so that the SSA will be in a position to evaluate the best interests of the agency, considering both acquisition and programmatic concerns. (See FAR 15.303.)

C. Source Evaluation Panel (SEP)

1. The NRC requires an SEP for all competitive procurements over the SAT. An SEP is formed to evaluate contractor proposals in response to NRC solicitations. Panel members should have requisite knowledge or experience in the areas or field covered by the SOW. Familiarity with the SOW and evaluation criteria and instructions is vital to the role of each SEP member. The SOW and evaluation criteria are generally attached to the evaluation instructions provided to the SEP during the CO's initial SEP briefing.
2. The SEP helps the CO develop the source selection plan to evaluate proposals against the solicitation's evaluation criteria and may also support the CO in discussions and negotiations.
 - (a) SEP Membership
 - (i) Members of the SEP represent the various technical and functional disciplines needed to evaluate proposals for the procurement.
 - (ii) An SEP includes at least one or more technical members and may also include the CS as a nonvoting member of the panel. The DO initiating the procurement nominates SEP members by memorandum to the CO who typically serves as the SSA. The names of the nominees should be included in the requisition package. The CO reviews the list of individuals to ensure candidates are qualified to evaluate proposals and formally designates SEP members.
 - (iii) The technical members evaluate offerors' technical proposals using weighted evaluation criteria. The SEP must possess sufficient technical and functional expertise to adequately assess the technical merits of offerors' proposals. A technical member on the panel must also serve as the SEP chairperson. The chairperson should be a technical expert in the area of the supplies or services being procured and should be a senior official, normally at the GG-15 level. The SEP chairperson ensures that the SEP promptly conducts the required evaluation, documents the proposal evaluation process, and submits its evaluation report to the CS for review.
 - (iv) The CS serves as a non-voting member of the panel as the procurement expert, facilitator, and liaison to the SEP on behalf of the CO. The CS may attend proposal discussions, respond to SEP questions or concerns about evaluation procedures and rating/scoring methodology, provide Contractor Performance Assessment Reports (CPAR), and provide feedback on evaluator worksheets (or similar documentation) and SEP evaluation reports.
 - (v) The SEP should not exceed five members, including the chairperson, except in unusual cases when conducting major procurements that are complex and high dollar value. Typically, an SEP of three to five members is sufficient for

competitive contracts over the SAT threshold. In the case of competitive orders (i.e., where fair opportunity to be considered must be provided), it is suggested that at least three SEP members be designated for orders valued at \$5 million and over when using the best value tradeoff method. An SEP of one or more members may be used when evaluating sole source orders having an approved justification or orders issued under single award IDCs. When determining the number of SEP members, the SEP and the CO should consider variables specific to the particular type of procurement, including complexity and dollar value. The requirement office should consult with the assigned CO if guidance is needed in this area.

- (vi) The SEP chairperson may obtain the services of advisors from OGC or OCFO, an expert from another Federal agency, or another source to help the SEP, as necessary, with the approval of the CO. The CO governs the extent of the advisor's participation in the SEP. Although these advisors are not SEP voting members, the potential for conflict of interest must be carefully evaluated.

(b) SEP Responsibilities

- (i) Each SEP member must be able to devote the time and effort necessary to ensure successful conduct of SEP activities and the timely submission of high-quality products. If this total commitment is impossible, the DO should nominate a knowledgeable and qualified replacement to the CO who is able to devote the requisite time to this responsibility. The DO nominates changes in SEP membership by memorandum in consultation with the CO. The CO designates panel members.
- (ii) Full discussion is encouraged on all matters considered by the SEP. If differences of opinion cannot be resolved, SEP reports will state the issue, reflect the majority opinion, and include the reasons for any dissenting view.
- (iii) Primary duties of the SEP include, but are not limited to:
 - Reviewing proposals thoroughly before rating (scoring) them.
 - Evaluating proposals independently based on solicitation evaluation criteria, including conducting reference checks and evaluating past performance information and reports.
 - Carefully and fully documenting individual evaluation worksheets for each offeror, showing documentation for each technical factor(s) or subfactor(s).
 - Ensuring scores are adequately supported by narrative.
 - Maintaining objectivity.

- Discussing proposal issues or concerns openly within the SEP.
- Maintaining consistency and continuity in scoring using a common rating scheme or methodology.
- Preparing a detailed evaluation report and final evaluation report (if discussions are required).
- Supporting the CS with cost realism or tradeoff analyses.
- Supporting the CO and the CS in any debriefing of the unsuccessful offerors.
- Supporting the CO with a response to an agency or GAO protest.

(c) SEP Chairperson Responsibilities

Primary duties and responsibilities of an SEP chairperson include, but are not limited to:

- (i) Leading the overall technical evaluation.
- (ii) Ensuring the safe storage of contractor proposals and SEP materials.
- (iii) Scheduling SEP meetings and handling related logistics.
- (iv) Ensuring that all SEP members review guidelines regarding SEP functions.
- (v) Designating tasks among members according to their background and experience.
- (vi) Ensuring the effective preparation of all SEP reports and documents and the effective conduct of the SEP's activities in support of the overall procurement.
- (vii) Resolving all SEP procedural matters.
- (viii) Ensuring prompt preparation of the SEP's evaluation report and the final evaluation report if discussions are required.
- (ix) Coordinating reference checks.
- (x) Coordinating with CS for review of CPARS.
- (xi) Collecting individual evaluation worksheets and ensuring accuracy, completeness, and consistency with the established scoring scheme.
- (xii) Identifying issues for negotiation if discussions are necessary.
- (xiii) Submitting all completed reports, worksheets, and other documents to the CS.

(d) CS Responsibilities

The CS serves as a facilitator and liaison to the SEP. Duties and responsibilities of the CS include, but are not limited to:

- (i) Helping the CO with the initial SEP briefing and distributing offerors' technical proposals.
- (ii) Reviewing the SEP certification statement with SEP members. If there is an actual or a potential conflict of interest, the views of OGC may be solicited.
- (iii) Assisting the CS with developing and revising milestone schedules for procurements.
- (iv) Providing procurement advice to panel members.
- (v) Obtaining and distributing documents including applicable procedures, policies, and instructions to SEP members and advisors.
- (vi) Attending evaluation meetings as necessary.
- (vii) Coordinating with SEP during cost/price evaluation for cost realism or tradeoff analyses, as applicable.
- (viii) Facilitating the conduct of oral presentations.
- (ix) Providing timely procurement advice and guidance to the SEP in response to issues that arise.
- (x) Scheduling and facilitating the conduct of debriefings of unsuccessful offerors.
- (xi) Arranging for and facilitating the conduct of any pre-award site visits with offerors.
- (xii) Ensuring the integrity of the entire proposal evaluation process.
- (xiii) Sharing pertinent information with the CO about SEP proceedings.
- (xiv) Reviewing SEP documents to ensure accuracy, completeness, and consistency with solicitation and CO evaluation instructions.
- (xv) The CS shares and negotiates issues with offerors, including those shared by the SEP, on behalf of the CO when a competitive range is developed.

D. Procurement Integrity: Access to and Release of Information

1. Current and former Federal employees who have had access to procurement information are responsible for protecting it from unlawful disclosure as well as individuals currently advising (or who have advised) the Government regarding a procurement.

2. The Federal Acquisition Reform Act of 1996 amended the Procurement Integrity Act (41 U.S.C. 423) to expand the breadth of procurement information under competitive procurements that must be protected from disclosure before award of the contract. The information to be restricted from disclosure includes source selection information, as well as bid and proposal information.
3. The Procurement Integrity Act (Section 27 of the Office of Federal Procurement Act of 1988) includes a ban on disclosure of certain types of procurement sensitive information, as follows:
 - (a) Contractor bid or proposal information includes:
 - (i) Cost or pricing data;
 - (ii) Indirect costs and direct labor rates;
 - (iii) Proprietary information about manufacturing process, operations, or techniques identified as proprietary by any contractor; and
 - (iv) Information identified by any contractor as “contractor bid or proposal information.”
 - (b) Source selection information includes:
 - (i) Bid prices submitted by bidders;
 - (ii) Costs or prices submitted by offerors;
 - (iii) Source selection plans;
 - (iv) Technical evaluation plans;
 - (v) Technical evaluations of proposals;
 - (vi) Competitive range determinations;
 - (vii) Rankings of bids, proposals, or competitors;
 - (viii) Reports and evaluations of source selection panels, boards, or advisory councils; and
 - (ix) Other information marked as “source selection information.”
4. Each SEP member is required to complete a certification statement that advises members of requirements and restrictions dealing with proprietary and source selection information. This certification is an internal NRC requirement for each individual appointed to the SEP or appointed as a technical advisor to the SEP. Appointments to SEPs are made by the CO. The certification statement advises members of their responsibility to protect bid, proposal, and source selection information during the SEP process. SEP members and advisors must declare any financial or other relationships that may create a conflict of interest with their SEP

- duties. Supervisors and managers who may have access to source selection information are bound by these same requirements and must safeguard this information from unauthorized disclosure. The SEP certification statement explains requirements and restrictions dealing with proprietary and source selection information. (See FAR 3.104-1.)
5. NRC managers responsible for projects to be awarded through contracts under a competitive procurement process and wanting access to source selection information must request access to this information, in writing, to the CO, and have a legitimate need-to-know.
 6. Information concerning an acquisition in process must not be released outside the agency before solicitation, except for the following:
 - (a) Presolicitation notices. (See FAR 14.205, 15.201, or 36.213-2.)
 - (b) Estimates of long-range acquisition requirements. (See FAR 5.404.)
 - (c) Public notices. (See FAR 5.201).
 - (d) "The Forecast of Contract Opportunities" issued by SBP.
 7. Any discussion of the procurement is strictly limited to the SEP and other procurement officials associated with the acquisition.

E. Source Selection Techniques

There are several source selection techniques that may be used for a competitive procurement.

1. Best Value (FAR 15.101)

An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a greater role in source selection. The less defined the requirement or the greater the performance risk, the greater the role technical or past-performance considerations may play in source selection.
2. Tradeoff Process (FAR 15.101-1)
 - (a) A tradeoff process is a competitive negotiation process in which the Government evaluates both price and nonprice factors and awards the contract to the offeror proposing the combination of factors that offers the best value to the Government. This process is appropriate when it is in the best interest of the Government to consider award to other than the lowest price offeror or the highest technically rated offeror. In making the award decision under this

process, the Government makes a tradeoff analysis of the proposals among cost or price and noncost factors, ascertaining which offers the best overall value. Previously this process was described as the best value process.

- (b) A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror. It allows flexibility to balance technical and cost factors. The SEP compares strengths, weaknesses, risk, and cost, and then determines which combination represents the greatest value. When using a tradeoff process, the following apply:
 - (i) All evaluation factors and significant subfactors that will affect contract award and their relative importance must be clearly stated in the solicitation.
 - (ii) The solicitation must state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.
- (c) Lowest Price Technically Acceptable Source Selection Process (FAR 15.101-2)

The LPTA source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price. Tradeoffs are not permitted. Proposals are evaluated for acceptability to technical requirements, not pricing matters.
- (d) Oral Presentations (FAR 15.102)
 - (i) An agency may request that all offerors make oral presentations which may substitute for, or augment, written information. Using oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. An oral presentation is a presentation by the offeror that demonstrates his or her capability to perform a proposed contract. The most common uses of oral presentations are to demonstrate a system and present a summary of the methods or approach the offeror will use to perform the contract, followed by questions and answers or a solution of a sample task. The advantage of the oral presentation is that it permits the agency evaluators to speak directly with the key personnel who will perform the contract if it is awarded to the offeror. Written documentation provided by offerors is usually limited to copies of slides or presentation, cost/price information, certifications and representations, and a signed offer sheet.
 - (ii) When oral presentations are required, the solicitation must provide offerors with sufficient information to prepare them.

3. Developing Evaluation Factors (Criteria)

- (a) An important factor in the development of the solicitation package (the solicitation) is the identification of the evaluation criteria that will be used to assess the quality of proposals received. The evaluation criteria, which are placed in the solicitation, set forth factors that must be examined when evaluating each proposal to determine the offeror's ability to perform the work requirements of the SOW and to establish the acceptability of the proposal. The development of effective evaluation criteria requires a thorough understanding of the objectives of the proposed procurement, problems or obstacles that may be encountered during the course of the project, and the significance of the various facets of the project.
- (b) In developing evaluation criteria, the CO must decide whether award will be determined by the lowest price among all technically acceptable proposals or on tradeoffs for the best value for the Government.
- (c) The LPTA source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price. Award is made to the offeror with the lowest price and a technically acceptable proposal. There is no additional consideration given for technical expertise above acceptable levels established in the solicitation. LPTA may be used in situations where the Government would not realize any value from a proposal exceeding the Government's minimum technical or performance requirements. When using this process, the following factors apply:
 - (i) The evaluation factors and significant subfactors that establish the requirements of acceptability must be set forth in the solicitation.
 - (ii) The nonprice factors are all evaluated on an acceptable/unacceptable basis with no gradations or scores for higher levels of achievement.
 - (iii) Solicitations must specify that award will be made by the lowest evaluated price of proposals meeting or exceeding the acceptability standards for noncost factors.
 - (iv) If the CO uses past performance as an evaluation factor, it must be evaluated under FAR 15.305(a)(2). While the NRC encourages the use of past performance as an evaluation factor, if the CO determines that it is not appropriate, then he or she shall document the file accordingly pursuant to FAR 15.304(c)(3)(iii).
 - (v) The comparative assessment in FAR 15.305(a)(2)(i) does not apply.
 - (vi) Tradeoffs are not permitted.

- (vii) Proposals are evaluated for acceptability but not ranked using the noncost/price factors.
 - (viii) Exchanges may occur, namely clarifications. (See FAR 15.306.)
 - (d) Evaluation criteria must be realistic and consistent with the work described in the SOW. Evaluation criteria identify the factors that will be used in evaluating a proposal. There should be a correlation between the SOW, the proposal preparation instructions, and the evaluation criteria. This correlation is critical because it ensures that the offeror prepares a proposal that relates to the evaluation criteria. In addition, the evaluation criteria should facilitate the identification of significant strengths, weaknesses, significant weaknesses, or deficiencies of offerors' proposals. The number of criteria should be limited to facilitate a focus on the significant aspects of the evaluation.
 - (e) The solicitation must clearly state the evaluation factors and subfactors that will be considered in making the source selection and their relative importance. Examples of evaluation factors and subfactors include cost- or price-related factors, past performance, and other factors not related to cost or price.
 - (f) The solicitation (RFP) should be structured to provide for the selection of the source (vendor) whose proposal offers the greatest value to the agency in performance, risk management, and cost or price factors.
 - (g) The evaluation criteria developed and set forth in the solicitation must be used in the evaluation of proposals received in response to the solicitation. If the criteria are changed during the evaluation, all offerors must be advised of the change and given the opportunity to modify their proposals accordingly.
4. Selecting Evaluation Criteria
- (a) The COR may use discretion in recommending the evaluation criteria, which is attached to the requisition, and the relative importance of those criteria except for—
 - (i) Price or cost must be included as an evaluation factor in every source selection, but are not point scored or adjectively rated at the NRC.
 - (ii) Generally, past performance shall be evaluated in all competitively negotiated acquisitions expected to exceed the SAT. However, in the case of LPTA, if the CO determines that use of past performance is inappropriate, he or she shall document the contract file specifying the reasons why past performance is not an appropriate evaluation factor for the acquisition pursuant to FAR 15.101-2(b)(1) and 15.304(c)(3)(iii).
 - (iii) The solicitation must describe the approach for evaluating past performance, provide an opportunity for the offeror to identify past or current contracts for similar efforts, and authorize offerors to provide information on problems

encountered and corrective action on these contracts. The SSA (typically the CO) must consider this information and determine the relevance of the information. The evaluation should consider past performance information regarding predecessor companies, key personnel, and subcontractors with major roles in the procurement.

- (b) The CO must indicate whether all the evaluation criteria not related to cost or price, when combined, are—
 - (i) Significantly more important than the cost or price,
 - (ii) Approximately equal in importance to the cost or price, or
 - (iii) Significantly less important than the cost or price.

5. Specific Categories of Criteria

- (a) Evaluation criteria should be set forth under basic categories. For NRC procurements, the categories normally will be past performance and some combination of technical, managerial, and financial. The qualitative aspects of cost may be assessed in a realistic relationship to the project rather than an exact analysis of the dollar amount. For example, an unusually low cost estimate by an offeror may reflect a lack of understanding of the personnel and resources required to perform the job or a lack of appreciation for the effort required to resolve technical problems. Within each category, specific criteria will focus on evaluating significant items leading to a composite rating of the category.
- (b) For the application of specific criteria in the most complex procurements, it may be necessary to include a further breakdown of criteria into subcriteria, which also should be set forth in the solicitation. Nonetheless, the solicitation should consider using one evaluation factor or using a limited number of evaluation factors, whenever possible, to streamline the evaluation process. For example, past performance can often successfully be the only evaluation criteria applied for technical evaluation. When assisting a requirement office or SEP in designing or using past performance information, the CS is encouraged to review OPFF's "Best Practices for Collecting and Using Current and Past Performance Information." (See OMB Web site at http://www.whitehouse.gov/omb/best_practice_re_past_perf.)
- (c) When evaluating price, there is a unique criterion implemented in the FAR to benefit HUBZone firms. For competitive procurements greater than the SAT, a Price Evaluation Preference for HubZone small business concerns is accomplished by adding 10 percent to other offerors' prices that are not HUBZone firms (FAR 19.1307(b)). Each preference or adjustment must be added independently to other offerors' base prices when compared to the

HUBZone. For the most complex procurements, this set of evaluation criteria may be used:

- (i) Organizational experience and past performance (consider if prior work was of comparable size and complexity and how well that prior work was performed).
 - (ii) Technical qualifications and availability of proposed personnel, including designation of “key” personnel.
 - (iii) Corporate capability (ability to manage the work, provide quality deliverables, and monitor project status and costs).
- (d) Each proposed evaluation criterion or subcriterion should be stated clearly and concisely. Care in delineating proposed criteria may reveal redundancies that, when not eliminated, can have an adverse effect on the selection if the same factor is evaluated more than once. In addition, the criteria should be carefully reviewed to ensure that it is consistent with the SOW.

6. Proposal Evaluation

- (a) Proposal evaluation is an assessment of a contractor’s (offeror) proposal and the firm’s ability to perform the contract requirements successfully. The Government evaluates proposals and then assesses their value compared to stated criteria in the solicitation. Evaluations may be completed using any rating method or combination of methods, including numeric scores, adjectives, colors, and ordinal rankings determined to be appropriate for the individual requirement by the CO. The relative strengths, weaknesses, significant weaknesses, deficiencies, and risks must be documented in the contract file to support any evaluation, as ratings or scores alone are not sufficient. The NRC prefers to use either a numeric point system or an adjectival rating procedure.
- (b) Evaluation factors are used in solicitations to:
 - (i) Serve as a uniform baseline by which to judge offerors’ proposals and determine best value to the Government.
 - (ii) Ensure the Government measures how well each offeror meets agency requirements.
 - (iii) Represent the minimum number of factors used to distinguish among offerors’ proposals (discriminators).
- (c) The Comptroller General of the Government Accountability Office (GAO) has held that:

While adjectival ratings and point scores are useful as guides to decisionmaking, they generally are not controlling and must be supplemented by documentation of the relative differences (strengths, weaknesses, significant

weaknesses, and deficiencies) between proposals, their performance risks, and the basis and reasons for the selection decision. (See FAR 15.608.) The CO's judgment in the evaluation of proposals must be reasonable and must bear a rational and logical relationship to the established solicitation criteria upon which competing offers are to be evaluated against and selected. An agency must have adequate documentation to support its evaluation of proposals and its selection decision, no matter what evaluation method is used. While adjectival ratings and point scores are useful as guides to decisionmaking, they generally are not controlling and must be supported by documentation of the relative differences between proposals, their strengths, weaknesses, and risks, and the basis and reasons for the selection decision. Point scores and adjectival ratings are only guides to help the CO and other Source Selection panel officials in evaluating "offerors" proposals and do not mandate automatic selection of any proposal.

(d) Establishing Weights and Scoring for Technical Criteria and Past Performance

- (i) Numerical weights employed in the evaluation of proposals are disclosed in an NRC solicitation. If a solicitation uses numerical weights, the solicitation must clearly state those weights and the relative importance and minimum requirements of each technical evaluation criterion and subcriterion that the NRC will use to evaluate offers by assigning a numerical weight to each criterion, when applicable. The relative importance of factors that are not numerically weighted will be stated in the solicitation. Examples of factors that are not numerically weighted are OCOI, estimated costs or prices, and "go/no-go" evaluation factors. Past performance should have at least as much weight as any other criterion. Thus, on a scale of 100 points, when past performance is the only noncost criterion, it will be worth a maximum of 100 points. In a complex procurement, past performance may be worth 50 points, the technical approach may be worth a maximum of 25 points, the management plan may be worth a maximum of 15 points, and corporate experience may be worth a maximum of 10 points. This example is an illustration. Criteria and their weights will vary from one procurement action to another.
- (ii) Technical evaluation criteria must be designed so that offerors lacking relevant past performance history are not evaluated favorably or unfavorably. The neutral evaluation may be accomplished simply by not scoring past performance and averaging the remaining evaluation factors to arrive at a score for the offeror or by applying a midway neutral score (e.g., 10 of 20 points). However, to limit instances where a neutral past performance rating is needed, the solicitation may require information for key personnel, subcontractors, or work the offeror performed as part of a team or joint venture. Contracting Officers must identify in the solicitation the approach that

will be used by the NRC for purposes of assessing a neutral rating in the case of an offeror without a record of relevant past performance or for whom information on past performance is not available. (See FAR 15.305(a)(2).)

(e) Adjectival Ratings

- (i) Adjectival ratings may be used in the evaluation of proposals in lieu of, or in combination with, points.
- (ii) Adjectives afford the Government greater flexibility in making award decisions compared to points or algebraic formulas. However, the Government must clearly identify and define what the adjectives are and how they will be used in the solicitation.
- (iii) Below are illustrative adjectival ratings with generic definitions. It is preferable to tailor the adjectives and definitions to suit the particular needs and requirements of the solicitation. Adjectives and definitions must be meaningful, clear, and concise to be effective tools in evaluating contractor proposals during source selection. It is critical that the SEP fully understand the use of adjectival ratings and apply them consistently.

- EXCELLENT

The proposal strengths demonstrate an excellent understanding of the requirements and the new or proven approach significantly exceeds performance or capability standards. The proposal has several exceptional strengths that will significantly benefit the Government. The proposal has no weaknesses; normal contractor effort and normal Government monitoring will be sufficient to minimize risk. The proposal is extensive, detailed, and exceeds all requirements and objectives; therefore, it has a high probability of meeting the requirements with little or no risk to the Government (“LOW” performance risk).

- GOOD

The proposal demonstrates a good understanding of the requirements and the approach exceeds performance or capability standards. The proposal has several strengths that will benefit the Government. Any proposal weakness has little potential to cause a disruption of schedule, an increase in cost, or a degradation of performance. Normal contractor effort and normal Government monitoring will probably be able to overcome any difficulties. The proposal generally exceeds requirements in most areas; therefore, it has a good probability of meeting the requirements with little risk to the Government (“LOW” performance risk).

- SATISFACTORY

The proposal demonstrates an acceptable understanding of the requirements, and the approach meets performance or capability standards. The proposal has no notable strengths that will benefit the Government. The proposal has multiple weaknesses. Any proposal weakness can potentially cause a disruption of schedules, an increase in cost, or a degradation of performance. Special contractor emphasis and close Government monitoring will probably minimize any difficulties of risk. The proposal generally meets requirements; therefore, it has a likely probability of meeting minimum requirements ("MEDIUM" performance risk).

- MARGINAL

The proposal demonstrates a limited understanding of the requirements, and the approach only marginally meets performance or capability standards necessary for minimal contract performance. The proposal has minor omissions and demonstrates some misunderstanding of the requirement that may be corrected or resolved through discussions, without a complete revision of the proposal. The approach has multiple weaknesses or significant weaknesses that can potentially cause some disruption of schedule, increase in cost, or degradation of performance, even with special contractor emphasis and close Government monitoring ("HIGH" performance risk).

- UNSATISFACTORY

The proposal demonstrates a lack of understanding of the requirements, and the approach fails to meet performance or capability standards. The proposal has major omissions and inadequate detail to assure the agency that the offeror has a proper understanding of the requirements. The proposal proposes an unacceptable risk and cannot meet the requirements without major revisions. The proposal includes significant weaknesses or deficiencies that cannot be resolved through discussions and would require a complete rewrite of the proposal ("HIGH" performance risk).

(f) Criteria Not Numerically Rated

- (i) Not all proposal criteria lend themselves to numerical ratings. For example, in hardware and facility procurements, certain features may be mandatory and, therefore, not weighted. Estimated cost or price is not usually numerically rated. Although not numerically rated, costs are evaluated to determine reasonableness and realism in terms of the proposed work. Labor rates, overhead rates, and equipment pricing are individually analyzed to make this

determination. Questionable rates or prices and other significant cost concerns are discussed or negotiated with offerors.

- (ii) At the CO's discretion, cost/price evaluations may be completed simultaneously with or separately from technical evaluations.

(g) Oral Presentations

When discussing the use of evaluation criteria, the requirement office may consider receiving oral presentations as a means of evaluating an offeror. Oral presentations as discussed in FAR 15.102 are an expedient method for conducting a procurement when used in place of a written proposal. Information pertaining to an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks may be suitable for oral presentations. In most cases, some handouts (usually copies of presentation slides and résumés of limited key personnel) are desirable. To maximize the benefits of using oral presentations, the written documentation that the CS maintains in the contract file is kept to a minimum. However, past performance references and cost information are submitted in writing. In deciding what information to obtain through oral presentation, consider the following:

- (i) The Government's ability to adequately evaluate the information.
 - (ii) Whether and what part, if any, of submitted information should be incorporated into any resultant contract.
 - (iii) The effect on the efficiency of the acquisition process.
 - (iv) The impact the process may have (including cost) on a small business's capability to respond to the solicitation.
- (h) The solicitation must provide offerors with sufficient information to prepare for the oral presentation. The CO must maintain evaluations of the oral presentations in the contract file. Oral presentations require the same evaluation report format used to document written proposals.
- (i) A record of the communications and materials used or provided during the oral presentation must be maintained and provided to the CO. This record may include a tape or Digital Video Recorder of the presentation and/or detailed notes of the presentations, along with the records of the oral presentations for review. In the event of a dispute regarding the oral discussions, the records will also allow absent evaluators and the source selection official to independently evaluate the oral presentations.

7. Environmental Consideration in Source Selection Evaluations

- (a) FAR 11.002 states that executive agencies shall consider maximum practicable use of energy and water-efficient low standby power; renewable energy

technology; biobased, recycled content; and environmentally preferable products and services when developing source selection factors.

- (b) When evaluating acquisitions for products and services, COs must consider sustainable acquisition, including source selection factors in acquisitions that may include the following:
 - (i) Energy-efficient and water-efficient services and products (including products containing energy-efficient standby power devices) (FAR Subpart 23.2);
 - (ii) Products and services that use renewable energy technologies (FAR Subpart 23.2);
 - (iii) Products containing recovered materials (FAR Subpart 23.4);
 - (iv) Biobased products (FAR Subpart 23.4);
 - (v) Environmentally preferable products and services, including EPEAT-registered electronic products and non-toxic or low-toxic alternatives (FAR Subpart 23.7); and
 - (vi) Non-ozone depleting substances (FAR Subpart 23.8).
- (c) When evaluating acquisitions for EIT products and services, Section 508 requires 100 percent compliance or the best compliance among the alternatives, unless an exception applies. (See FAR Subpart 39.2.) Unless an exception applies and is documented by the requiring activity, executive agencies shall, to the maximum practicable, require the use of products and services when—
 - (i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions), and standards;
 - (ii) Describing Government requirements for products and services; and
 - (iii) Developing source-selection factors.

8. Evaluation Factor or Subfactor for Small Disadvantaged Businesses (SDB)

As an incentive to encourage offerors to use small disadvantaged businesses (SDBs) as subcontractors, an evaluation factor or subfactor shall be included (for procurements expected to exceed the dollar thresholds indicated at FAR 19.1202-2, except for acquisitions specified under FAR 19.1202-2(b)). Under this factor or subfactor, offerors are evaluated for providing targets for SDB participation. The score for this factor is included in the scored proposal evaluation and later incorporated into a resulting contract.

XIII. PROCUREMENT METHODS AND GENERAL PROCESSES

A. General

Once the solicitation has been developed and issued, the process for awarding a contract in response to the solicitation depends on the procurement method chosen. Documents and information pertinent to the source selection process, including proposals, must be treated as confidential information and restricted to those having a legitimate need-to-know based on the employee's job responsibilities. The various procurement methods and the process within those methods are discussed below.

B. Competitive Negotiated Procurements

1. Because of the nature of NRC's technical programs, the need to evaluate factors other than price and the ability to question and discuss specific proposals are of critical importance.
2. For acquisitions of research and technical assistance, the FAR recognizes the need for flexibility during the process of evaluating potential offerors so that highly important factors in addition to cost/price can be carefully evaluated by collective judgment, and proposals can be improved through negotiation. Factors considered during the negotiation of a proposal may include, but are not limited to, technical aspects of the proposal, delivery dates, performance and reporting requirements, contractor capability, corporate experience, past performance, technical or management approach, and key personnel.
3. Definition of Processes
 - (a) "Price analysis" is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. This task may be accomplished by comparing proposed prices received in response to the solicitation, comparing previously proposed prices and contract prices with current proposed prices for the same or similar items if the previous prices were reasonable, comparing the proposed prices with competitive published prices and market research, or comparing the proposed prices with the IGCE.
 - (b) Price analysis is the preferred method for evaluating competitive proposals. Certified cost or pricing data must not be required from offerors unless the CO determines price competition is not adequate to support a determination of price reasonableness. When the CO determines that adequate price competition exists, certified cost or pricing data must not be requested. In situations with established catalog or market prices, prices set by law or regulation, or commercial items, price analysis is sufficient, and the CO must not request certified cost or pricing data. The CO must require offerors to submit non-certified cost or pricing data when necessary to determine price reasonableness.

- (c) “Cost analysis” is the review and evaluation of the separate cost elements and profit or fee in an offeror's proposal and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. Techniques include verifying cost or pricing data and evaluation of cost elements, including the necessity and reasonableness of proposed costs.
- (d) “Cost realism analysis” is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

4. Definition of Terms

- (a) A “strength” is an element of the proposal representing something of value to the NRC that is above the stated minimum requirements specified in the SOW.
- (b) A “weakness” is an element (i.e., flaw) in the proposal that increases the risk of unsuccessful contract performance.
- (c) A “significant weakness” in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance or adverse information relating to relevant past performance.
- (d) A “deficiency” is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

C. Preproposal Conference, Conference Summary, and Amendment to the Solicitation

1. A preproposal conference provides prospective offerors the opportunity to gain a better understanding of the objectives of the procurement. It also offers the SEP an opportunity to stress the importance of evaluation criteria so that interested organizations may decide whether to incur the cost of proposal preparation.
2. The CS must make the necessary arrangements for and conduct the preproposal conference in close collaboration and coordination with the COR and the CO. Interested organizations will expect a general presentation, followed by the opportunity to ask specific questions. Questions regarding the procurement should be submitted in writing to the CS before the preproposal conference. SEP members will be available to read the questions aloud and answer them. It is essential that provisions of the RFP not be changed during the preproposal conference. The terms

of a solicitation may be changed only by formal written amendments approved by the CO and posted on FBO by the CS.

3. The CS must prepare a summary of important issues discussed at the preproposal conference and must review it to ensure that all questions were answered carefully and clearly to avoid any misunderstanding. The CS, in conjunction with the COR or requirement office, will post the CO-approved agency positions on questions discussed at the preproposal conference on FBO through the issuance of a Questions and Answers (Q&A) document or formal amendment to the solicitation, if necessary. At times, a combination approach may be required when certain responses will not warrant actual changes to the solicitation, while others may.
4. An amendment is an alteration to a solicitation and must be issued on the SF 30, "Amendment of Solicitation/Modification of Contract." The amendment may be used for purposes that include the following:
 - (a) Forwarding minutes of the preproposal conference;
 - (b) Changing the specifications of the solicitation;
 - (c) Changing the quantity of supplies or services;
 - (d) Modifying the delivery schedule; or
 - (e) Correcting, clarifying, or incorporating additional information.
5. If the amendment significantly changes the solicitation, and prospective offerors will not have enough time to revise their responses before the closing date, a CO-approved notice or written amendment to the solicitation should be posted by the CS on FBO, in advance of the closing date, at the earliest possible time.
6. Under NRC's public responsiveness policy, AMD should provide a response to written questions from potential offerors regarding the solicitation within approximately 10 calendar days after the cutoff date specified in the solicitation. The response shall be in writing and may be in the form of an amendment to the solicitation. If an interim response is necessary, include a date by which the final response will be provided. Questions that are received by telephone may be answered verbally at the time of the call if the issue raised is already included in publicized documents (i.e., FBO notices or solicitation). Otherwise, a timely notice or amendment should be posted in FBO when the response must be shared with all potential offerors.

D. Receipt of Proposals

1. Proposals in response to an NRC solicitation must reach AMD by the closing time and date stipulated in the solicitation document. Once AMD receives all the proposals, the CS opens them but does not discuss the proposals with anyone other

than procurement officials (e.g., COR, SEP members, and the CO) who have a need-to-know. Proposals are not opened publicly and may not be inspected by prospective contractors or NRC employees not directly responsible for the evaluation or the award of the contract.

2. A proposal received at the designated Government office after the exact time specified for receipt of proposals is "late" and will not be considered unless it meets conditions set forth in FAR 15.208.

E. Proposal Distribution and Evaluation

1. General

Proposal evaluation is an assessment of both the proposal and the offeror's ability to successfully accomplish the prospective contract. The proposals are evaluated solely on the evaluation factors specified in the solicitation. After the proposals are received, the SEP will be convened, at which time the CS will distribute the proposals and discuss proposal evaluation procedures and documentation. Unless managers or supervisors are officially designated members of or advisors to the SEP, they are prohibited from reading or concurring on the SEP evaluation report. Also, those persons who are party to the SEP evaluation must sign and submit non-disclosure forms to the CS before evaluating proposals.

2. Technical Proposal Evaluation

- (a) The proposals should be distributed with instructions for technical evaluation, SEP certification statement, and copies of offerors' proposals. These procedures should explain how the SEP will complete evaluation worksheets and properly handle the proposals, especially any proprietary or procurement-sensitive information contained in them. The panel will establish a timeframe for completing the evaluation within the overall procurement milestone schedule. The timeframe for evaluation of technical proposals will depend on the number of proposals and their complexity. The SEP will confer and determine when proposal evaluations should be completed. SEP certifications should be signed and returned to the CS at this meeting. This certification includes procurement integrity and non-disclosure agreements.
- (b) Each technical member of the SEP will independently evaluate each proposal. By use of narrative and numerical scoring or adjectival rating techniques (as appropriate), the member will rate the proposal against the evaluation criteria established in the solicitation in their relative order of importance. Using the agreed-upon scoring system, the member will independently prepare a separate written evaluation for each proposal. These proposals must not be compared to

one another or rated against each other. The evaluation, in both its initial and final stages, must include the following:

- (i) Individual evaluation worksheets showing scores and supporting detailed comments on offerors' strengths or weaknesses, significant weaknesses, deficiencies, and any clarifications needed.
 - (ii) A summary score sheet keyed to the basic criteria.
 - (iii) A narrative statement keyed to the summary score sheet and the appropriate page of the offeror's proposal that covers the following:
 - Any strengths affecting the scoring;
 - Any weaknesses, significant weakness, or deficiencies affecting the scoring;
 - Any issues bearing on the rating that require further SEP discussion;
 - Any issues requiring clarifications;
 - Any issues requiring exchanges regarding evaluating past performance if this is the determining factor for not including the offeror in the competitive range; and
 - Questions for negotiations with those offerors in the competitive range.
- (c) Generally, the SEP will only be provided technical proposals for initial evaluation, unless otherwise stated by the CO. However, in sole source procurements, as an example, offerors' cost proposals and supporting financial information are sometimes provided to members of the SEP at the same time as technical proposals for evaluation, at the CO's discretion. The SEP must use both the technical and cost information to perform the most accurate integrated assessment of each offeror's proposal. The SEP must complete its evaluation based upon all facts (i.e., technical and cost) presented to it. The SEP will review the cost proposals, both the overall cost estimate and cost/price elements, for reasonableness and document its findings on the evaluation forms provided. Other circumstances that may warrant the SEP reviewing both technical and cost information may occur when the CO requires technical input for cost realism or tradeoff analysis later in the evaluation stage, after having received an initial SEP evaluation report.

F. Proposal Review and Analysis

1. General

- (a) In analyzing cost proposals, the ultimate objective is to ensure that the final cost/price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required. When the CS analyzes cost, there are several approaches to consider.
- (b) Cost realism analyses shall be performed on cost-reimbursement contracts to be used as a basis for negotiating the estimated cost of the contract.
- (c) In conjunction with audit findings, the CS will also evaluate all cost elements and fees separately.
- (d) The collective evaluation of technical and cost proposals forms the basis for the agency's negotiation position. When the cost proposal is not consistent with the proposed technical time and expertise, it will be noted on the evaluation sheets and addressed in the SEP's evaluation report.
- (e) During the evaluation period, the SEP conducts reference checks.

2. Discussion of Technical and Cost Proposals

- (a) All members of the SEP will meet to fully discuss individual evaluations and their observations regarding technical merit. The SEP evaluation score sheets should be provided by the CS to the SEP before any proposal review meetings and typically distributed and explained during the SEP initial briefing. SEP discussion meetings involve a thorough discussion of each proposal against the evaluation factors identified in the solicitation. It is normal practice for the SEP to have a roundtable discussion in which members discuss the results of their individual evaluations. An attempt is made to reach consensus on evaluations; however, it is not mandatory that all members agree on all factors, and they are entitled to their individual scores. SEP members may adjust their scores up or down by the roundtable discussion or if there is a wide variance between panel members. In cases of wide variance in scoring, the SEP chairperson should provide adequate time for discussion among panel members, and ensure that all members are adhering to the requirements of the solicitation and CO instructions regarding evaluating proposals and common scoring scheme. Also, all ratings or scores must be sufficiently documented and supported by a detailed narrative. It may also be helpful if each panel member discussed what they saw as strengths and weaknesses to ensure consistency in evaluating proposals. After discussion, initial technical scores and ranking will be assigned for each proposal.
- (b) The SEP may be asked to review cost or price proposals during the initial evaluation or after an independent evaluation of technical proposals is completed

and the SEP evaluation report submitted, as deemed appropriate by the CO. If the cost/price proposals were provided to the SEP with the technical proposals, the SEP will review them before the meeting. If not, the SEP will review them at the meeting by looking at both the overall cost estimate and cost/price elements for reasonableness and will document its findings on the evaluation forms provided. The CS will provide cost/price proposal analysis information for the SEP's consideration in determining cost realism or making technical/cost tradeoffs.

- (c) If award is to be made without discussion, the SEP submits an evaluation report with a recommendation for award to the SSA/CO. The SSA is the agency official responsible for making contract award decisions. At the NRC, this official is typically the CO. (See FAR 15.3.) If discussions are to be performed, the SEP will include offerors in its evaluation report to be included in the competitive range for CO consideration.

3. Clarifications and Award Without Discussions

- (a) If award will be made without conducting discussions (negotiations), offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information (capabilities) and adverse past performance information to which the offeror has not previously had an opportunity to respond or to resolve minor or clerical matters). Clarifications are limited exchanges between the Government and offerors that may occur when award without discussions is contemplated. Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions.
- (b) The SEP chairperson should concur on the notice to unsuccessful offerors. OGC is required to concur or comment on letters to unsuccessful offerors, and the CO signs and approves them.

4. Communications with Offerors After Receipt of Proposals

- (a) "Communications" are exchanges between the Government (CO) and offerors, after receipt of proposals, leading to establishment of the competitive range. Communications may be held before establishment of the competitive range, which is drafted by the CS for CO approval. All communications are documented in writing by the CS and placed in the contract file. Communications shall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. These communications shall address adverse past performance information to which an offeror has not had a prior opportunity to respond and may only be held with those offerors whose exclusion from or inclusion in the competitive range is uncertain.

- (b) Communications also may be used to enhance Government understanding of a proposal, allow reasonable interpretation of the proposal, or facilitate the Government's evaluation process. These communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or otherwise revise the proposal. Communications shall not provide an opportunity for the offeror to revise its proposal but may address ambiguities in the proposals.
5. Preparation of SEP Evaluation Report and Contracting Officer Competitive Range Report
- (a) The SEP prepares its evaluation report for each proposal. Based on the points or ratings received for each proposal against the solicitation's stated evaluation criteria, the SEP ranks offerors' technical proposals and establishes an evaluation report composed of all evaluation ratings or scores and indicates the most highly rated proposals. The SEP recommends offerors for inclusion in, or exclusion from, the competition range, if discussions will be held. The CS reviews the SEP's evaluation report and scrutinizes the individual evaluation worksheets or documentation to ensure consistency, completeness, and accuracy. OGC also reviews the SEP evaluation report and provides its concurrence.
- (b) The competitive range report is drafted by the CS, reviewed by OGC, and approved by the CO. The report documents the decision to include or exclude offerors from further consideration for award. The CS coordinates with the SEP chairperson to ensure that the panel's report and input are taken into consideration. The competitive range must involve consideration of both technical and cost factors. An offeror will be included within the competitive range if it is among the highly rated by results of the scoring, the evaluation narrative, and the cost or price. Scoring by itself should not be the sole basis for this determination. The CS must also thoroughly examine the evaluation report narrative, in consultation with the SEP chairperson, and determine a proposal's weaknesses to be shared during discussions with each offeror in the competitive range.
- (c) After evaluating all proposals, the CO may determine that the number of proposals that may otherwise be included in the competitive range exceeds the number at which an efficient competition can be accomplished. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency, the CO may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. The solicitation must have informed offerors of this possibility in advance of the possibility for eliminating proposals based solely on the Government's need for a more efficient competition. Since the Government

strives to maximize competition, any decision to further eliminate offerors from competition should be taken very seriously and supported by strong rationale.

6. Notification to All Offerors of Competitive Range Results/Pre-award Debriefings
 - (a) After CO approval of the competitive range report, the CS promptly notifies, in writing, all offerors whose proposals are excluded from the competitive range or are otherwise eliminated from competition. The notice shall state the basis for the determination and that a proposal revision will not be considered. The notice shall be transmitted by certified mail, return receipt requested, or other means, including an e-mail message with receipt requested, that will enable the NRC to independently verify the date when the excluded offeror received the notice of exclusion.
 - (b) The excluded offeror may request a debriefing before award under FAR 15.505. The request must be made in writing within 3 days after the date on which the excluded offeror receives a competitive range exclusion notice. The CS will maintain a record of when AMD received the written request for a debriefing from the offeror.
 - (c) Pre-award debriefings include the following minimal information:
 - (i) The agency's evaluation of significant elements in the offeror's proposal;
 - (ii) A summary of the rationale for eliminating the offeror from competition; and
 - (iii) Reasonable responses to relevant questions as to whether source selection procedures contained in the solicitation, applicable regulations, and other authorities were followed in the process of eliminating the offeror from the competitive range.
 - (d) Pre-award debriefings shall not disclose the number of offerors, the identity of other offerors, the content of other offerors' proposals, the ranking of other offerors, the evaluation of other offerors, or any information prohibited in FAR 15.506(e), including:
 - (i) Trade secrets;
 - (ii) Privileged or confidential manufacturing process and techniques;
 - (iii) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
 - (iv) The names of individuals providing reference information about an offeror's past performance.
 - (e) The CO and members of the SEP (typically the chairperson) will make every effort to debrief the unsuccessful offeror in writing, in person, or by telephone as soon as practicable, but may refuse the request for a debriefing if it is not in the

best interests of the Government to do a debriefing at that time. At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed, it shall include all information normally provided in a postaward briefing. (See FAR 15.506(d).)

- (f) The CS must provide written notification to offerors in the competitive range. The letter should indicate, through questions or comments, any weaknesses, significant weaknesses, deficiencies, and other aspects of their proposals that could be clarified or revised to enhance the proposal's potential for award. At a minimum, discussions must include significant weaknesses and deficiencies. The letter will include a proposed date and time for a subsequent meeting or teleconference with the offeror. The CS must transmit written notification by certified mail, return receipt requested, or other means, including an e-mail message with receipt requested, that will enable the NRC to independently verify the date when the offeror received the notice.
 - (g) The SEP chairperson should concur on the notice to unsuccessful offerors. OGC is required to concur or comment on letters to unsuccessful offerors, and the CO signs and approves them.
7. Written or Oral Discussions, Negotiations, and Exchanges After Establishment of the Competitive Range
- (a) General
 - (i) Negotiations are exchanges, in either a competitive or a sole source environment, between the Government and offerors that are undertaken with the intent of allowing the offerors to revise their proposals. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are held in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. For discussions to be meaningful, they are tailored specifically to each offeror's proposal. The primary objective of discussions is to maximize the Government's ability to obtain best value.
 - (ii) When preparing for written or oral discussions, the SEP must develop questions for offerors in the competitive range and, if appropriate, request a pre-award audit before conducting the discussions. Discussions regarding technical matters may be conducted before receipt of an audit.
 - (b) Questions for Offerors

The CS and SEP members (typically the SEP chairperson) prepare for negotiations with the goal of attaining a meeting of the minds through responses

to questions and ensuing panel discussions. The offeror's proposal is reviewed along with the competitive range report, focusing on the offeror's strengths, weaknesses, significant weaknesses, and deficiencies so that clear questions relating to technical issues and cost are assembled for use during the negotiations.

(c) Preaward Audit Report

- (i) The CS may request audit information from the DCAA or other cognizant audit agency (CAA) as soon as there is a good indication of which offerors will be included in the competitive range. This step may be taken so that all cost information may be received by the time the competitive range report is approved and discussions are to begin.
- (ii) At the CO's discretion, formal audits from DCAA/CAA may be requested for proposals similar to the dollar threshold for requesting certified cost or pricing data included in FAR 15.403-4(a)(1). DCAA requires that a copy of the offeror's cost proposal and a copy of the solicitation be sent with the audit request. Formal audits are generally received approximately 30 to 45 days from the date of request.
- (iii) For proposals of less than the FAR dollar threshold amount found in FAR 15.403-4(a)(1), a rate verification request may be made to DCAA/CAA. This request may be a simple direct labor and/or indirect rate check if the offeror has a formal rate agreement already in existence with DCAA/CAA. A rate check is generally received approximately 3 weeks from the date of request. Rate information also may be obtained from other Government agencies.
- (iv) The CS will analyze audit report or rate-check information to develop cost questions for discussions and negotiations, if necessary.

8. Conduct of Discussions and Negotiations

- (a) The primary objective of discussions is to maximize the Government's ability to obtain best value. Discussions are tailored to each offeror's proposal and must be performed or controlled by the CO with each offeror in the competitive range.
- (b) Written or oral discussions with firms in the competitive range can be used. During discussions, the CS should share with each offeror within the competitive range all weaknesses, significant weaknesses, deficiencies, and ambiguities or uncertainties in the proposal. The CO may also discuss other aspects of the offeror's proposal that could be altered to explain or materially enhance the proposal's potential for award. However, at a minimum, discussions shall include significant weaknesses and deficiencies, including adverse past performance information to which the offeror has not yet had an opportunity to respond. In

these discussions, the CS shall not divulge the content of any competitor's proposal or information obtained from or about another competitor to avoid giving one competitor an unfair advantage. The CS will not favor one offeror over another or reveal names of individuals providing references about an offeror's past performance. The discussions are intended to help both the agency and the offeror in fully understanding the strengths and weaknesses of the proposal.

- (c) When past performance is an evaluation factor and adverse information is uncovered when references are contacted, the CS will inform the offeror and allow the offeror an opportunity to respond.
 - (d) If the DCAA/CAA audit report has not been received, cost discussions may be delayed for a later time. As with all discussions, these cost discussions must be conducted in a uniform manner with all offerors.
 - (e) The time available, the expense and administrative limitations, and the size and significance of the procurement should be considered when deciding on the type, duration, and depth of discussions. It is important to adequately convey the agency's requirements to the offerors so that all offerors are on an equal footing. The CS, with the help of SEP members, will point out instances in which the meaning of some aspect of the proposal fails to include substantiation for a proposed approach, solution, or estimated cost. These guidelines are not all-inclusive; careful judgment must be exercised for each procurement to promote meaningful discussions.
9. Proposal Revisions
- (a) If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.
 - (b) The CO may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final revised proposal. The CO is required to establish a common cutoff date only for receipt of final proposal revisions. Requests for final revisions of the proposals shall advise offerors that the final revisions shall be in writing and that the NRC intends to make award without obtaining further revisions.
 - (c) Evaluation of the Revised Proposals
 - (i) The CS will forward the revised proposals to SEP members, providing each individual evaluator's worksheets previously used for the initial evaluation.
 - (ii) The CS will perform an indepth cost analysis after receiving evaluation information from other SEP members.

- (iii) The SEP will prepare a narrative summary describing changes in the proposal as a result of the final revisions and a technical assessment of those changes. The SEP members will each rescore their worksheets independently under previous evaluation procedures, usually within 1 to 2 weeks after receipt and consistent with the milestone schedule. If no changes have been made, the SEP should so state.

10. Meeting to Discuss Revised Proposals

The SEP will meet to review revised worksheets and discuss the recommendation for award. The SEP initial evaluation worksheets should be returned by the CS to SEP members before the meeting. The SEP members independently do a thorough review of the revised proposals against the evaluation criteria. The SEP members should go over their evaluation jointly to ensure that they fully understand each other's reasoning and that they may make changes in their scoring to reflect what they learn through these exchanges of viewpoints. The SEP members discuss the results of their evaluation of revised proposals, including revised ratings or scores, and reach consensus on an award recommendation at this time. During this evaluation phase, the CS is responsible for providing timely guidance to the SEP's questions and ensures that the panel does not deviate from established evaluation criteria or instructions.

11. SEP Final Evaluation Report

- (a) The SEP will document its findings and recommendation on all offerors, including the apparent successful offeror in the final evaluation report. The SEP chairperson prepares the final evaluation report and communicates any concerns with the CS. After all members of the SEP concur on the report, the report will be forwarded from the SEP chairperson, through the CS, to the CO who serves as the SSA at the NRC. Unless managers or supervisors, including DOs, are officially designated as members or advisors of the SEP, they are prohibited from reviewing source selection information, including the SEP report. Only the SEP chairperson approves the SEP report. The SEP report is supported by individual evaluation worksheets or other evaluation documentation and summary score sheets by the SEP members and becomes part of the official AMD contract file. The SEP report is shared with the CS and OGC for review, signed and approved by the SEP Chairperson, and submitted to the CO.
- (b) For tradeoff source selections, the CO will often seek advice from the SEP (typically the chairperson) when selecting the technically superior, higher cost proposal. The CS will work with the SEP when comparing the technical merits of proposals with cost and determine technical tradeoffs. The comparison will list the strengths and weaknesses of the proposals. The tradeoff source selection process is used for procurements in which the agency's requirements and

evaluation factors are broadly stated and technical considerations and past performance, collectively, are given substantially higher relative weight than cost. As appropriate, the CO may request a formal memorandum from the SEP to document and support SEP input into the tradeoff analysis.

12. Source Selection Award Decision

- (a) The CS will forward the final evaluation report to the CO (SSA) with a recommendation to approve the report. The SSA's decision will be made by a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use the SEP final evaluation report, the source selection decision represents the SSA's independent judgment. The source selection decision must be documented and include the SSA's rationale for any business judgments and tradeoffs made or relied upon, including benefits associated with additional costs. Although the rationale for the source selection must be documented, that documentation need not quantify the tradeoffs that led to the decision.
- (b) The balancing or tradeoff of cost considerations against technical and other considerations is accomplished by the application of sound business judgment rather than by a predefined weighing formula. When doing a cost and technical tradeoff in a procurement for which award is to be made by a technically superior, higher priced proposal, the CO should document reasoned analysis showing that the agency expects to receive benefits commensurate with the price premium it will have to pay. This benefit should be clearly defined and, if possible, stated in mission needs.
- (c) The CS will prepare a summary of negotiations addressing the major agreements of the parties.

13. Preaward Approvals

- (a) Before award, the CO ensures that all required documents are included in the official contract file.
- (b) An equal employment opportunity clearance is required if the procurement value is greater than the dollar threshold stated in FAR 22.805. If the award is to a large business and the procurement value is greater than the dollar threshold stated in FAR 22.805, the CS sends the subcontracting plan of the apparent successful offeror to SBP so that SBP can review the plan for compliance with FAR 19.7.

14. Contract Award and Notification to Unsuccessful Offerors

- (a) CS mails or transmits (by e-mail) the contract to the successful offeror for signature and sends the notice of award to FBO 1 day after contract award.

- (b) CS sends the notification to unsuccessful offerors within 3 days of contract award, under FAR 15.503. This written notification must be transmitted by certified mail, return receipt requested, or other means, including an e-mail message with receipt requested, that will enable the NRC to independently verify the date the unsuccessful offeror received the written notification.

15. Postaward Debriefings

- (a) Unsuccessful offerors are entitled to a comprehensive postaward debriefing when a request is made to the CO within 3 days of receiving notification of contract award. A debriefing provides an opportunity for an offeror to learn the reasons why the proposal was unsuccessful. Through the debriefing, which is required by FAR 15.506, the offeror learns of significant weaknesses and deficiencies or strengths in the proposal that are supported by the evaluation information from the CO's competitive range report and SEP's final evaluation report. At the election of the CO, a timely written debriefing may be used in lieu of a face-to-face debriefing. The debriefing conference is normally chaired by the CO and is attended by the CS and members of the SEP (typically the chairperson), and may include a representative from OGC, if appropriate. A debriefing should be held with only one offeror at a time. The CO must then make every effort to provide the debriefing within 5 days of receipt of the request. In all other cases, the SEP will provide a debriefing after award within 10 calendar days of receipt of the request. Debriefings may be given orally, in writing, or by electronic means under FAR 15.506. A written summary of each debriefing should be included in the contract file.
- (b) The debriefing session is sensitive because the offeror must be able to conclude that its offer was judged unsuccessful on an objective basis and that the agency's decision was fair and impartial. The debriefing should not disclose confidential information or trade secrets associated with other offers and should not include discussions of either the content of other proposals or the relative positions of the unsuccessful offerors. A well-executed debriefing conference affords the opportunity for an offeror to learn from its weaknesses so that the firm can be more competitive in future NRC procurements. While the debriefing shall not be a point-by-point comparison of the offers, it must include at least the following:
 - (i) Strengths of the offeror's proposal;
 - (ii) Significant weaknesses or deficiencies of the offeror's proposal;
 - (iii) Overall adjectival rating or numerical score and cost or price of both the winning proposal and the offeror being debriefed;
 - (iv) Overall ranking of all offerors, when developed (as part of the evaluation process);

- (v) Summary of the rationale for the award decision;
- (vi) Reasonable responses to relevant questions as to whether the source selection procedures and regulations applicable to the process were followed;
- (vii) For commercial contracting, identity of the specific make and model offered by the successful offeror, if a commercial item is proposed as an end item deliverable; and
- (viii) Past performance ratings (of the debriefed offer only).

16. Protests

- (a) A “protest” is an objection submitted in writing by an interested party disagreeing with an agency solicitation for offers, the cancellation of a solicitation, or the award or proposed award of a contract. Offerors may find cause to protest some aspect of the procurement. For example, a contractor may allege that restrictive specifications were used or may disagree with being excluded from the competitive range.
- (b) A protest must be in writing and may be filed with the agency, under FAR 33.103, or it may be filed under FAR 33.102 and 33.104. Protests to the agency will first be handled by the CO. The protestor may appeal the CO's decision by determining or providing a written request to the Director of AMD to do an independent review of the CO's decision. The procedures the NRC uses to handle protests are set forth in FAR 33.103 and supplemented by NRCAR 2033.103.
- (c) Before submission of an agency protest, all parties with concerns should use their best efforts to resolve these concerns at the CO level through open and frank discussions.
- (d) When possible, parties should strive for inexpensive, informal, procedurally simple, and speedy resolution of protests. When appropriate, the use of alternative dispute resolution techniques, neutral third parties, and other agency personnel are acceptable resolution methods.

G. Other Than Full and Open Negotiated Procurements

Other than full and open negotiated procurements are actions that limit competition. Except when a requirement is of unusual and compelling urgency, these procurements require a JOFOC before the acquisition process may proceed. Once the appropriate approval has been obtained, the procurement process is similar to other negotiated procurements except for the use of an SEP and its associated activities and reports. While an SEP may be used for a small business set-aside competition, the COR and the CS usually evaluate the technical and cost/price proposals in lieu of an SEP for sole source and other limited competitive procurements.

1. Processing a Procurement Under Other Than Full and Open Competition

- (a) If the CO agrees that the proposed procurement should be awarded without full and open competition after reviewing a draft JOFOC, the CS places a notice of intent to contract on a noncompetitive basis in FBO. An FBO notice need not be placed for those procurements for which the sole source is justified by any of the criteria listed under FAR 6.302-3(a) or an international agreement under FAR 6.302-4.
- (b) To expedite the evaluation process, responses to the FBO notice should be reviewed upon receipt, when possible, rather than at the end of the 45-day period. The CO may employ members of an SEP, employing one or more requirement office employees or other technical experts to help the CO in evaluating the qualifications submitted by an organization in response to the FBO notice of a sole source requirement. (See FAR 5.207(c)(16)(i) and (ii).) If any responses lack sufficient information for evaluation, they will not be considered. The CO is not obligated to request additional information from the respondent. In a memorandum for the file, the CO will document the evaluation of all responses and the decision to proceed with either a competitive or noncompetitive action. The CO is not required to notify respondents of the results of the NRC's evaluation of their submittals, but may do so, if appropriate.
- (c) The CS may release the solicitation to the proposed sole source contractor after the requirement has been posted in FBO, under FAR 5.203, for 15 days. If the proposal is received before the end of the 45-day limitation, it will be forwarded to the requirement office for review and evaluation. AMD may concurrently review and evaluate the proposal and request a cost proposal audit. The CS may proceed in the procurement process up through the negotiation and discussion stage. However, award may not take place until 45 days after publication of the FBO notice of intent and not before the JOFOC has been approved by the authorized agency representative.
- (d) Generally, the CS then processes the procurement using the steps for a competitive negotiated procurement, except for SEP functions.

2. Response From FedBizOpps Results in Competitive Action

- (a) In the event responses to the FBO notice indicate that there are two or more qualified parties, the proposed procurement will be processed as a competitive action and the CO will proceed under FAR 5.203 for publicizing and response times.
- (b) The CS also will help the requirement office in preparing a complete requisition for supplies or services if one has not already been submitted. The requisition package should include a definitive SOW, justification and approval, GFP,

security access request forms, technical evaluation criteria, and an IGCE (required for acquisitions over the micro-purchase threshold). If not previously designated, the CS should ensure that a complete SEP is assigned to the project. AMD does not issue another FBO notice.

- (c) The CS should issue the RFP/solicitation to all qualified sources and proceed with the project on a competitive basis, allowing at least 30 days from the solicitation issuance date for submission of proposals.

3. Sole Source Acquisition Because of Unusual and Compelling Circumstances

If a sole source requirement is of unusual and compelling urgency, the CO may forgo the requirement to place a notice in FBO describing the procurement and may waive approval of the JOFOC until after award after obtaining approvals. The CS may then issue the solicitation to the contractor. Negotiations are held upon receipt of the proposal.

H. Other Procurement Methods

1. General

The following are unique methods of procurement that deviate from standard-competitive and limited-competitive acquisitions. None of these methods require a JOFOC.

2. Other Methods: Broad Agency Announcement (BAA)

- (a) A Broad Agency Announcement (BAA) is an announcement by a requirement office of areas of research interest, including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the agency's needs. The solicitation of a BAA is one of the competitive procedures meeting the statutory requirement for full and open competition and is advertised in FBO. However, BAAs may be used only when meaningful proposals with varying scientific or technical approaches can reasonably be expected.

- (b) The benefit of the BAA is the ability to make multiple awards by one announcement, reducing procurement lead time and the staff effort involved in initiating several competitive projects. The BAA also provides flexibility in source selection by the merits of the individual proposal(s).

- (c) The BAA is an efficient means of soliciting competitive basic or applied research ideas. A BAA may be used for scientific study and experimentation or for increasing knowledge and understanding, rather than focusing on a specific system or hardware solution.

- (d) The CS, by discussions and written background information provided by the requirement office, writes the FBO BAA notice. The FBO BAA notice specifies

the period in which proposals may be submitted, during which awards or selections may be made at any time. It will further state if all proposals are not to be reviewed at a common time, no further review of proposals will be made after designated funding is no longer available.

- (e) The BAA should—
 - (i) Describe the agency's research interest, either for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements.
 - (ii) Describe the criteria for selecting the proposals, their relative importance, and the method of evaluation.
 - (iii) Specify the period of time during which proposals that have been submitted in response to the BAA will be accepted.
 - (iv) Contain instructions for the preparation and submission of proposals.
- 3. Proposals received in response to a BAA must be evaluated by criteria specified in the announcement by a peer or scientific review group (serving on the SEP) nominated by the DO. The BAA evaluation criteria should include scientific merit and describe the method to be used for evaluating proposals. Written evaluation reports on individual proposals are necessary.
- 4. Criteria for selecting contractors may include—
 - (a) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.
 - (b) Overall scientific, technical, or socioeconomic merits of the proposal.
 - (c) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives.
 - (d) Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical to achieving the proposal objectives.
 - (e) Potential contribution of the effort to the NRC mission.
 - (f) Overall standing among similar proposals available and/or evaluation against the known state of the art.
- 5. Once a proposal is received, communication between the requirement office and the offeror must be coordinated through AMD and is permitted for clarification purposes only.

6. After evaluation of the proposals, the DO, serving as a procurement official, will submit a comprehensive evaluation report to the CO recommending the source for contract award. The report must reflect the basis for the selection or nonselection of each proposal received as it relates to the criteria specified in the BAA. The primary bases for award are technical excellence, importance to agency programs, and the availability of funding. Contracts are awarded until the agency has used its research funds in the particular area of interest.
7. Other Methods: Unsolicited Proposals
 - (a) Unsolicited proposals are written proposals that are submitted to the agency on the initiative of the submitter for obtaining a contract with the agency. They can be a useful source in support of the NRC accomplishing its mission. These proposals are not in response to a formal or informal request other than an agency request constituting a publicized general statement of needs. (See FAR Subpart 15.6 and NRCAR 2015.6.)
 - (b) A valid unsolicited proposal must—
 - (i) Be innovative and unique.
 - (ii) Be independently originated and developed by the offeror.
 - (iii) Be prepared without Government supervision, endorsement, direction, or direct Government involvement.
 - (iv) Include sufficient detail to permit a determination that Government support can be worthwhile and the proposal work can benefit the agency's research and development or other mission responsibilities.
 - (v) Not be an advance proposal for a known requirement that can be acquired by competitive methods.
 - (vi) Not address a previously published agency requirement (FAR 15.603(c)).
8. Processing Unsolicited Proposals
 - (a) The Director of AMD is the receiving point of contact for unsolicited proposals. If received in an NRC office other than AMD, all unsolicited proposals should be sent to the Director of AMD immediately. The appropriate legends will be attached to the proposal for its protection, and an acknowledgment will be sent to the proposer notifying him or her of receipt. Staff of the Procurement Policy Team (PPT), AMD (hereinafter PPT), will evaluate the proposal to ensure that it contains the minimum information required to qualify as an unsolicited proposal and that it has been approved by an official of the organization authorized to negotiate and commit the proposing organization to a contract.

- (b) The following do not constitute unsolicited proposals:
- (i) Advertising material designed to acquaint the agency with a potential proposer's off-the-shelf products or capabilities or designed to determine the agency's interest in buying these products. (This material is sometimes accepted for reference.)
 - (ii) Commercial product offerings of standard commercial products usually sold in substantial quantities to the general public (e.g., is available to the Government without restriction from another source). (These are materials that the vendor wishes to see introduced into the agency's supply system as an alternate or replacement for an existing supply item and are treated as advertising material.)
 - (iii) Contributions of concepts, suggestions, or merely ideas presented to the agency for its use, with no indication on the part of the offeror that he or she will devote any further effort on behalf of the agency in relation to these concepts, suggestions, or ideas.
 - (iv) Technical correspondence related to written requests for information regarding agency interest in research areas, preproposal explorations, technical inquiries, and submission of research descriptions. (However, the NRC encourages inquiries before submission of unsolicited proposals.)
 - (v) Capability statements informing the NRC of an individual's or an organization's technical, business, manufacturing experience, capability, and background. (These statements are sometimes accepted for reference.)
 - (vi) Closely resembles a pending competitive acquisition.
 - (vii) Does not relate to the agency's or office's mission.
 - (viii) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not a meritorious proposal.
- (c) After the evaluation is completed, the copies of the proposal will be sent to the directors of offices that may have an interest in the contents of the proposal, identifying any deficiencies in format. The PPT will retain one copy of the proposal for its records.
- (d) If an unsolicited proposal is missing information but otherwise conforms to the FAR criteria, AMD will ask the proposer to provide that information. When the information is supplied, AMD will send the additional information to the offices reviewing the proposal.
- (e) The PPT will assume responsibility for tracking the proposal after receipt. This tracking includes keeping a record of the offices receiving the proposal, the number of copies forwarded, the dates they were received and forwarded to the

appropriate offices, notifications to the proposer of actions being taken about the proposal, and correspondence from the technical evaluators to AMD concerning the merits of the proposal. In addition, the PPT will maintain a file for each unsolicited proposal processed. This file will be made a part of the contract file if the proposal is eventually accepted. Any contract that is awarded as a direct result of an unsolicited proposal must be awarded on a noncompetitive basis. In the event an unsolicited proposal is not accepted, offices must return all copies of the proposal to AMD for disposition.

9. Evaluation of Unsolicited Proposals

- (a) The evaluators in each office should consider the following criteria in their evaluations of unsolicited proposals:
 - (i) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.
 - (ii) Overall scientific, technical, or socioeconomic merits of the proposal.
 - (iii) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives.
 - (iv) Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.
 - (v) Potential contribution of the effort to the agency's specific mission.
- (b) If it is determined that the proposal cannot be supported, the evaluator will prepare a written evaluation report explaining the reasons for its rejection. Rejection letters to offerors in response to their unsolicited proposal submissions should be informative to the maximum practical extent. Therefore, comprehensive technical reasons are to be given by the evaluator for the rejection of an unsolicited proposal.
- (c) Reasons for rejection may include the following:
 - (i) Technical flaws in approach or assumptions made.
 - (ii) Inadequate qualifications, capabilities, or expertise of the proposed principal investigator, team leader, or key personnel who are considered to be critical to achieving the objectives of the proposal.
 - (iii) A technical approach that could yield biased results.
 - (iv) Failure to meet the agency's needs.
 - (v) Duplication of current efforts or similar work that is intended to be procured by competitive solicitation in the future.

- (d) The evaluator of this proposal should keep in mind that the proposal should meet the following criteria (FAR 15.602-2):
- (i) Does the research proposal demonstrate unique and innovative methods, approaches, or concepts?
 - (ii) Does the proposal have overall scientific, technical, or socioeconomic merits?
 - (iii) Will the proposed effort make a potential contribution to the agency's specific mission at this time? (This criterion is especially important in this case, as the proposal should be considered as a grant application if this criterion is not met. The evaluator's confirmation of this criterion will help ensure proper handling of the proposal.)
 - (iv) Does the proposer have capabilities, related experience, facilities, techniques, or unique combinations thereof that are considered to be integral factors necessary to achieve the proposed objectives?
 - (v) Are the qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel considered to be critical in achieving the objectives of the proposal?
 - (vi) Are the proposal costs realistic for the work, do they reflect a clear understanding of the requirements, and are they consistent with unique methods of performance and materials described in the offeror's technical proposal (i.e., cost realism analysis performed)?
- (e) If the proposal is for ongoing research, pay particular attention to the period of performance proposed, its reasonableness, and the extent of the NRC's commitment to that period of performance. The written report will be returned through the OD not below the level of division director (or equivalent if the requirement office has no division director) to the HCA with all copies of the unsolicited proposal.
- (f) AMD will prepare an appropriate rejection letter to the proposer if the DO recommendation is not to support the unsolicited proposal.
- (g) If the proposal is to be supported and it is recommended that a contract be awarded for the work, a justification for a noncompetitive procurement, including consideration of the evaluation criteria discussed above, must be prepared and forwarded to AMD with a requisition. The justification should clearly state why the work proposed under the unsolicited proposal cannot be procured on a competitive basis. AMD will review the sufficiency of justification documents and determine the type of contract. If more than one office is interested in supporting the effort, representatives of the directors of those offices will meet with an AMD representative (CS or CO) to reach an agreement for funding.

(h) If at any time an evaluator believes that other NRC offices or Government agencies would find the proposal of value, the PPT should be notified. The PPT will forward the proposal to the other NRC offices or Government agencies and recommend that the proposer contact them. PPT staff also should be notified when evaluators from outside the agency or Government are required so that the PPT may forward the proposal and ensure proper tracking and protection. Additionally, it is important to caution NRC employees regarding the propriety of their contacts with firms and individuals seeking contracts with the NRC. While it is necessary and appropriate to have discussions with proposers, care must be taken to ensure that premature disclosures, including revealing the contents of a proposal to the proposer's competitors, are avoided and that general discussions can in no way be interpreted as an NRC commitment to fund the unsolicited proposal. The CO is the only individual authorized to bind the agency contractually or to otherwise obligate funds.

10. Restrictions on Information Contained in Unsolicited Proposals

- (a) To ensure that the integrity of the NRC is maintained with respect to receiving unsolicited proposals, certain prohibitions and protections have been devised to cover the information contained in the unsolicited proposal. The proposal cannot be used, either in its entirety or in part, as the basis for future solicitations or negotiations unless the proposer agrees in advance to permit the proposal's use in this manner. (See FAR 15.608.) However, this prohibition does not apply to any information contained in the proposal that may have been available to the NRC from another source without restriction. This prohibition is applicable only to information, techniques, processes, or data revealed for the first time in the subject proposal.
- (b) Further protection is provided by the use of the "limited use of data" legend. The PPT will ensure that the legend in FAR 15.609 is applied to all proposals and that legends applied by the offeror comply with FAR 15.609 when the offeror chooses to apply a restrictive legend.

11. Other Methods: An 8(a) Set-Aside

Once the requirement office and the CO have determined to set aside a procurement under the 8(a) program, the procurement process for noncompetitive 8(a) procurements is as follows:

(a) Selection of the Contractor

- (i) The requirement office is encouraged to suggest candidate firms or to call SBP for a list of 8(a) sources. The Dynamic Small Business Search on the SAM Web site at <https://www.sam.gov/portal/public/SAM/> identifies potential sources.

- (ii) The requirement office, in consultation with AMD, may decide to discuss the requirement with one or several candidate firms. This freedom of discussion between the COR and the candidate firms is an important advantage of the 8(a) procurement method. Although there is no requirement within the FAR to interview multiple firms, acquisition management practices favor this approach if time and resources permit and the dollar magnitude of the award warrants it. The requirement office can request that SBP help identify a potential 8(a) firm and may have a representative from SBP present during discussions with a firm. The COR may discuss any pertinent technical issue with a candidate firm, but may not discuss the specific terms of the SOW. Contract price may not be discussed and no specific promise of contract award may be made.

(b) Receipt of Authorization to Negotiate from the SBA, SBP

The CS sends an offering letter to SBA, SBP, that identifies the requirement, submits the name of the potential contractor, and requests authority to negotiate the contract. The CS may request that SBA, SBP, identify a qualified 8(a) firm for a requirement. If a notification of acceptance is not received by AMD within 5 working days of receipt of the offer by SBA, SBP, AMD may presume acceptance and proceed with the procurement on the following workday. (See NRC's Partnership Agreement with SBA, SBP.)

(c) Contract Award

- (i) Procurements issued under the 8(a) program and expected to exceed the dollar threshold located in FAR 19.805-1 are generally competed among eligible contractors. After negotiations between the NRC and the firm have been completed, the CS prepares a memorandum of negotiations and the contract document. Both are reviewed by the CO who awards the contract directly to the 8(a) contractor. An SBA cosignature is not required under the PA.
- (ii) Depending on the complexity of the requirement, the 8(a) method of contracting is generally less complex than any other contracting alternative. Except when competed, there is no requirement to advertise in FBO, no requirement for approval by the CA (may be redelegated to the Deputy Director of AMD), and only one proposal to evaluate. Once a contract is awarded to an 8(a) firm, each succeeding requirement essentially identical to the one awarded will be processed by the 8(a) method, absent a reasonable justification for switching to another method of procurement.

12. Other Methods: Small Business Set-Aside Programs

- (a) Competitive small business set-asides may be made with any of the following categories included in FAR Part 19, which outlines the entire portfolio of Federal small business programs:
 - (i) Total or partial small business,
 - (ii) 8(a) small business,
 - (iii) HUBZone small business,
 - (iv) SDVOSB,
 - (v) WOSB, or
 - (vi) EDWOFB.
- (b) The contracts are generally awarded using the competitive negotiated procedures in FAR Part 15.
- (c) Note: The small business programs above are not in any particular order of precedence.

13. Other Methods: Interagency Agreements

The NRC may obtain supplies or services from or through another Government agency using interagency agreements (IAAs). For information regarding award of IAAs to DOE and other agencies, refer to MD 11.7 and MD 11.8. These directives provide policies, procedures, and examples for negotiating and managing agreements with DOE and other Federal agencies.

14. Commercial Item Acquisitions

Title VIII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) implements the Federal Government's preference for the acquisition of commercial items by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

I. Task and Delivery Orders

For task and delivery order contracts, the Government places orders for individual requirements. In the case of multiple-award IDCs, contract holders are afforded a fair opportunity to be considered for each order, unless a statutory FAR exception applies. (See FAR 16.504 and 16.505.)

XIV. SIMPLIFIED ACQUISITIONS

A. General

1. The term “simplified acquisitions” is defined by the Federal Acquisition Streamlining Act of 1994 as purchases not exceeding the SAT, using procedures prescribed in FAR Part 13. (See FAR 2.101 for SAT dollar amount.) These procedures are intended to reduce administrative costs, improve opportunities for small businesses, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors. Although the Government has had mechanisms in place for small purchases, this Act changes the way Government can acquire low-dollar purchases.
2. Simplified acquisition procedures are used to make purchases of supplies or services using purchase orders, BPAs, Governmentwide commercial purchase cards, or any other appropriate authorized method, each having specific thresholds and procedures. Simplified acquisition procedures must not be used in the acquisition of supplies and services initially estimated to exceed the applicable SAT, even though resulting awards do not exceed that threshold.
3. Requirements aggregating more than the applicable SAT must not be broken down into several purchases that are less than the threshold merely to permit negotiation under simplified acquisition procedures or avoid any requirement that applies to purchases exceeding the micro-purchase threshold. COs are encouraged to use innovative approaches to the maximum extent practicable in awarding contracts using the simplified acquisition methods discussed below.

B. Micro-Purchases

1. A micro-purchase is an acquisition of supplies or services for which the aggregate amount does not exceed the dollar threshold in FAR 2.101 and Subpart 13.2. Micro-purchases for construction apply to the Davis-Bacon Act and are limited to the dollar threshold in FAR 2.101 and FAR Subpart 13.2. These purchases may be made from any eligible large or small business. The FAR exempts these purchases from the Buy American Act (FAR Subpart 25.1) and certain small business requirements.
2. Micro-purchases will be distributed equitably among qualified suppliers. If prices are reasonable, micro-purchases may be awarded without soliciting competitive quotations. Action including limited competition to verify price reasonableness needs to be taken if information indicates that the price may not be reasonable or if purchasing a supply or service for which no comparable pricing information is readily available. Prompt payment discounts should be solicited. (See FAR 13.202.)
3. Purchase cardholders should consider awarding to small business concerns, to the maximum extent practicable, when making micro-purchases. (See OFPP

Memorandum, "Increasing Opportunities for Small Businesses in Purchase Card Micro-Purchases," dated December 19, 2011.)

C. Purchase Cards

1. The NRC fully participates in the Governmentwide purchase card program, which implements GSA's Smart Pay Program. As a matter of policy, the purchase card program is the preferred method for making micro-purchases. This program streamlines payment procedures and, where appropriate, replaces existing BPAs and reduces administrative costs for micro-purchases of supplies and services at or below the dollar threshold included in FAR 2.101 and Part 13. A certification of funds (commitment), which must be obtained before making purchases, may be made in advance for estimated purchases over a period of time. Purchase card purchases are considered micro-purchases and may be made from any eligible large or small business.
2. The program is designed to—
 - (a) Increase the range of vendors available for any one purchase.
 - (b) Provide NRC personnel working at remote locations (e.g., inspectors) with a method of purchase acceptable to local vendors.
 - (c) Facilitate ease of purchase during emergency situations (e.g., nuclear plant incidents).
 - (d) Improve NRC cash management practices (e.g., consolidating payments and replacing imprest funds).
3. At the NRC, the purchase card can be used for a wide variety of supplies and services. NRC offices will comply with the "ADM Purchase Card Handbook." Employees will comply with restrictions as to prohibited purchases and required purchasing procedures. Offices are encouraged to nominate those permanent employees who can use the purchase card to increase office efficiency. AMD requires employees using purchase cards to complete mandatory online training. (See "NRC's Procedures for Use of the U.S. Government Purchase Card.") In instances in which the purchase card is not accepted, purchase card convenience checks may be used.
4. The NRC has the option to purchase thousands of products and services offered by GSA schedule contractors at <http://gsa.gov/portal/content/104677>.

D. Open Market Simplified Acquisitions

1. General

Purchases from the open market are awards made to commercial sources that are not delivery orders under existing contracts. For an open market procurement

action estimated to be greater than the micro-purchase threshold but not greater than the SAT, the supplies or services may be acquired through the simplified acquisition procedures using purchase orders or through the more complex solicitation process.

2. Small Business Set-Aside

- (a) Each acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold and not exceeding the SAT is reserved exclusively for small business concerns and shall be set aside.
- (b) This requirement applies only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands, including U.S. manufactured end products, unless a FAR exception applies. Foreign concerns may not be solicited or awarded acquisitions reserved for small business concerns. (See FAR 25.103.)
- (c) The requirement for small business set-aside does not affect the responsibility of the agency to make purchases from required sources of supply and services (those not procured on the open market), including Federal Prison Industries, Committee for Purchase from People Who Are Blind or Severely Disabled (which implements the AbilityOne Program), FSS contracts, and others listed in FAR 8.001.
- (d) If the CO determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in market price, quality, and delivery, the CO need not proceed with the small business set-aside and may purchase on an unrestricted basis. The CO must document in the file the reason for the unrestricted purchase. If an appeal is made to the SBA procurement center representative, and the representative disagrees with a CO's decision not to proceed with the small business set-aside, the SBA procurement center representative may appeal the decision.
- (e) The small business set-aside also requires that for purchases exceeding \$25,000, small business dealers provide a product that also was manufactured by a small business unless the SBA has already issued a class waiver for that type of requirement or the SBA grants a waiver for the specific purchase. A waiver allows small business to submit any firm's product.

3. Market Research

The PA or CS performs market research with the requirement office.

4. Determination of Requirements

The requirement office must develop a requisition package with an accurate and complete SOW (with quantity, quality, and schedule), including justifications and

approvals, IGCE, GFP, security access request forms, suggested evaluation criteria, and nomination of SEP members.

(a) At a minimum, the requester must provide the following information to AMD:

- (i) Description of Need (minimum requirement). Describe technical specifications in functions to be performed, supplemented as necessary by chemical properties and physical characteristics, including dimensions and tolerances, rather than dictating how the contractor is to perform the work.
- (ii) Brand Names or Equivalent. In addition, for all brand name products known to be acceptable and of current manufacture, identify by manufacturer's name and catalogue description the main or required characteristics of the product. When a brand or trade name item is not absolutely essential, indicate through the oral or written request for prices that other brands or types of products offering comparable utility are acceptable. Brand-name product features should be avoided, to the extent possible, to promote competition.

(b) The COR is responsible for providing a complete requirements package and routing it internally within his or her office, obtaining DO approval, and then submitting the action to the CS and CO for review and execution.

5. Certification of Available Funds

(a) A requisition package for supplies or services is required for all procurement actions.

(b) For headquarters and regional offices, the funds certifying official certifies funds for the estimated cost of the goods or services to be procured.

(c) Requests for furniture and office equipment (Federal Supply Groups 71 and 74) should be sent to the NRC Property Management Officer, PLSB, ADSC, ADM, for concurrence. After concurrence, the NRC Property Management Officer will send the requisition to the ADM funds certifying official for funds certification. For some EIT purchases, the Office of Information Services (OIS) will certify funds availability.

(d) For headquarters offices, some requisitions for administrative supplies and services or EIT resources may require certification of funds by ADM or OIS. The requirement office's funds certification official will advise the requester in these cases.

6. Justifications and Approvals

A determination in the form of a brief note must be furnished with the requesting documents if the requirement office requires that a purchase exceeding the micro-purchase threshold be made from a single source or has other restrictive specifications. The determination must show that other sources or items were

considered and give the reason why only one source or item is able to meet the requirement. By signing the requisition, the DO concurs on the purchase. The CO signs the determinations, indicating approval of the purchase.

7. Commercial and Non-Commercial Open Market Procurements: Soliciting Competition, Evaluation of Quotes, Award, Acceptance, and Termination or Cancellation

(a) Soliciting Competition

- (i) Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable if the contract action does not exceed \$25,000 (FAR 5.203(b)). Two sources not included in the previous solicitation should be requested to furnish quotations. The following factors influence the number of quotations required concerning any particular purchase:
 - Nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands or is relatively noncompetitive;
 - Electronic commerce system that employs widespread electronic public notice is not available;
 - Urgency of the proposed purchase;
 - Dollar value of the proposed purchase; and
 - Past experience concerning specific dealers' prices.
- (ii) The CO may solicit from one source if he or she determines that the circumstances of the contract action deem only one source as being reasonably available.
- (iii) The CS must develop a brief note to the file to explain the determination. The determination must state that other sources or items were considered and the reason why only one source or item is available to meet the requirement. A formal JOFOC, as required by FAR Part 6, is not mandated for a sole source simplified acquisition.
- (iv) When developing a solicitation, the CO should determine if the purchase is advantageous to the agency by either price alone or price and other factors (e.g., past performance and quality considered, including the administrative cost of the purchase). Requests for quotations or solicitations must notify suppliers that award is to be made by price alone or the basis of price and other factors.
- (v) Solicitations for open market acquisitions may take several forms. For acquisitions valued up to \$25,000, oral solicitations should be used unless doing so is not practical. A written request for quotation may be used as

appropriate, using SF 18, "Request for Quotation," in the GSA Forms Library, available at <http://www.gsa.gov/portal/forms/type/TOP>. A commercial item or service solicitation may be accomplished using SF 1449, "Solicitation/Contract/Order for Commercial Items," on the GSA Forms Library. This form is optional for procurements valued at the SAT or less and is mandatory for procurement of commercial items or services in excess of the SAT. If a means other than the SF 1449 is used for acquisition of a commercial item, the provisions required by FAR Part 12 must be cited. The CO must not limit solicitations to suppliers of well-known and widely distributed makes or brands or on a personal preference basis. The CO should make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts shall not be considered in the evaluation of quotations.

(b) Evaluation of Quotes

- (i) The CO may evaluate quotations or offers by price alone or by price and other factors combined (e.g., past performance or quality). Evaluations should not be necessary for most simplified acquisitions. When evaluating quotations or offers on price and other factors, contractor quotations or offers shall be evaluated solely by criteria established in the solicitation. Evaluations, where necessary, should be restricted to an appropriate combination of past performance, commercial literature, oral presentations, and key personnel.
- (ii) The solicitation should state the relative importance of the evaluation criteria and the relationship of technical criteria to cost. Formal evaluation criteria and weights should be avoided. Numerical scoring should be used only if there is a compelling reason to do so. For instance, when procuring training services, past performance and key personnel may be stated to have greater weight than cost, but assignment of numerical weights to the criteria is not necessary. Formal evaluation plans, conduct of discussions, and scoring of quotes or offers are not required. The processing time may be reduced by using simplified solicitations, streamlined evaluation methods, and award with simplified documentation.
- (iii) The requirement office should summarize its evaluation of the proposal or quotes in one page or less by criteria contained in the solicitation, noting both the strengths and weaknesses of each offeror.
- (iv) The CO must evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination. The CO also must make economic purchase of quantities when practicable.
- (v) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities

required. In these instances, the CO should inform the requirement office of all facts regarding the quotation and request it to confirm or alter its requirement. The file must be documented to support the final action taken.

- (vi) For procurement flexibility, the FAR requires simplified acquisitions to be negotiated unless special circumstances necessitate more formal procurement methods in the best interest of the agency. The use of negotiation is essential to achieve the intended procurement flexibility because the streamlined methods set up for simplified acquisitions are not possible under the more rigid requirements of sealed bidding. For instance, proposers seeking purchase orders are permitted to propose variations of the work that appears in the solicitation.
- (vii) After preliminary consideration of all quotations or offers, identify one that is most suitable to the user, which may be the lowest-priced brand-name product. (See FAR 13.106-2.)

8. Award

- (a) A written award document is required when a purchase is made by means other than the purchase card. A purchase order is an offer by the agency to buy certain supplies, nonpersonal services, or construction from commercial sources, upon specified terms and conditions, the aggregate amount of which generally is greater than the micro-purchase threshold, and does not exceed the SAT. A binding purchase order may be formed by written acceptance of the purchase order by the contractor or by the contractor's undertaking of the work.
- (b) A representative from AMD and a technical contact designated by the requirement office constitute an informal team to accomplish the requested procurement. Other NRC personnel, including legal and financial staff, will provide support as required.
- (c) Notification to unsuccessful suppliers shall be given only if requested. When a supplier requests information on an award that was determined on other than price alone, the notification shall include a brief explanation of the basis for the contract award decision.
- (d) All items of supply, furniture, and equipment for headquarters will be ordered for delivery, receipt, tagging, and inspection at the NRC warehouse, except when prior arrangements have been coordinated between the requester and the CO and approved by the NRC Property Management Officer, PLSB, ADSC, ADM.
- (e) The purchase order may be issued using Optional Form (OF) 347, "Order for Supplies or Services." The OF 347 may be used for commercial items valued at or below the SAT. The OF 347 is optional for commercial items or services applied at or below the SAT. (See FAR 12.204 - Solicitation/Contract Form.) Both forms,

OF 347 and SF 1449, are available on the U.S. General Services Administration's (GSA) Forms Library at <http://www.gsa.gov/portal/forms/type/TOP>.

9. Consignee (Requestor) Acceptance

- (a) The requirement office shall accept all goods and/or services delivered directly to them. If items are damaged, an overage or shortage exists, or services are not under the purchase order, the requirement office must immediately notify the vendor or AMD. The consignee (requester) will record the manufacturer, model, and serial numbers of directly delivered equipment on the receiving reports before the receiving reports are distributed. The consignee shall sign the three receiving reports to indicate acceptance or rejection of the goods and/or services, and forward one copy to the Controller, Division of the Controller (DOC), OCFO, and two copies to the appropriate regional Division of Resource Management and Administration.
- (b) NRC regional offices shall receive and accept goods upon delivery. If the property is damaged, the regional office must reject the goods upon delivery or have the vendor retrieve the damaged merchandise. The vendor is then required to forward non-defective or replacement merchandise to the regional office.

10. Termination or Cancellation of Simplified Acquisitions

- (a) If a simplified acquisition that has been accepted in writing by the contractor is to be terminated, the CO will process the termination action as prescribed by FAR Part 49.
- (b) If a simplified acquisition that has not been accepted in writing by the contractor is to be cancelled, the CO must notify the contractor in writing that the purchase order has been cancelled, request the contractor's written acceptance of the cancellation, and proceed as follows:
 - (i) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required. The purchase order is considered cancelled.
 - (ii) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the CO will process the termination action as prescribed by FAR Part 49.

E. Use of Indefinite Delivery Contracts (IDCs)

- 1. Costs and processing time for acquisitions at or below the SAT may be reduced through the use of IDCs that permit task/delivery orders to be placed by several contracting or ordering offices in one or more Federal agencies. (See FAR 16.504.)

Therefore, contracting offices are encouraged to seek opportunities to cooperate with each other to achieve efficiency and economy through the use of IDCs.

- (a) GWACs enable Federal agencies to buy cost-effective, innovative solutions for EIT requirements. GWACs provide access to EIT solutions including systems design, software engineering, information assurance, and enterprise architecture solutions. However, EIT products and services are not assumed to be Section 508 compliant.
- (b) Multi-agency contracts are delivery-order or task-order contracts established by one agency for use by other Federal agencies for supplies and services, including EIT.
- (c) Multiple awards of IDCs are for supplies or services where task or delivery-order contracts are awarded by another agency for which orders may be placed for supplies or services, including FSS contracts.
- (d) GSA's Federal Strategic Sourcing Initiative (FSSI) encourages cross-Government collaboration and adoption of industry best practices. This allows the Government to aggregate requirements, streamline processes, and leverage its buying power. As a result, best value and repeatable processes are created that can be used in any acquisition environment to drive down the cost of commonly purchased commodities. FSSI solutions provide easy access to common procurement vehicles, including BPAs or IDCs, that offer greater discounts as collective volume increases, business intelligence, and best practice solutions. The FSSI has the following primary goals:
 - (i) Strategically source across Federal agencies;
 - (ii) Establish mechanisms to increase total cost savings, value, and socioeconomic participation;
 - (iii) Collaborate with industry to develop optimal solutions;
 - (iv) Share best practices; and
 - (v) Create a strategic sourcing community of practice.
- (e) The FSS Program (FAR Subpart 8.4), also known as the GSA Schedules Program or the Multiple Award Schedule Program, is a discretionary program that offers supplies at fixed prices or services at hourly rates or at a fixed price for performance of a specific task (e.g., installation, maintenance, and repair). The ordering activity must specify the order type for the services offered on the schedule priced at hourly rates. Fixed-price orders should be used for the acquisition of commercial services to the maximum extent practicable. A time-and-materials or labor-hour order may be used for the acquisition of commercial services only when it is not possible at the time of placing the order

to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. For orders over the prescribed dollar threshold, the requiring agency shall determine that use of the FSS is the best procurement approach under FAR 17.502-1(a). Note: A small business size status evaluation factor may be used in GSA FSS acquisitions under FAR 8.405-5(c).

F. Other Simplified Acquisition Methods

1. Blanket Purchase Agreements (BPAs)

(a) Applicability

- (i) A BPA is a simplified method of filling anticipated repetitive needs for supplies or services when exact items, quantities, and delivery requirements are not known in advance or may vary considerably. The agreement authorizes individuals to acquire items within simplified acquisition limitations by telephone rather than by written purchase order. At the NRC, this method is used for micro-purchases only when use of the Purchase Card is impracticable.
- (ii) The BPA method of buying was established before the purchase card program and was designed to meet all legal requirements in effect at that time. Because the Purchase Card may now offer a better alternative, the requirement office should consult early with the CS to determine if the use of the Purchase Card would be more appropriate for the anticipated purchase.
- (iii) Although the award of a BPA does not create a legally binding contract, the BPA contains terms and conditions for the placing of calls and ordering procedures that, when requested by authorized ordering offices and executed by the contractor, create legally binding contracts. The ordering official will record orders using NRC Form 104, "Blanket Purchase Agreement (BPA) Ordering/Receiving Report." Further procedures may be obtained from AMD when a BPA is contemplated.
- (iv) OIS approval is required when EIT work is placed using BPAs.
- (v) In appropriate circumstances, all headquarters and regional offices may fulfill small-dollar purchase requirements for anticipated repetitive needs for supplies or services through placement of orders under BPAs.

(b) Blanket Purchase Agreement Ceilings

- (i) The orders issued under a BPA shall not exceed the delegated authority of the ordering official unless approved by the Director of AMD.
- (ii) BPAs established with GSA FSS contractors must not exceed the maximum ordering threshold at the offered price and must be consistent with the terms

of the applicable schedule contract. If an order exceeds the contract ordering threshold, the CO will negotiate a price discount.

- (iii) Orders may not be placed before the effective award date or after the expiration of a BPA.
- (iv) Upon determining its basic requirements, the requirement office will prepare and submit a requisition package and obtain the certification of funds from the appropriate certifying official. The amount certified may not exceed the SAT per vendor for open market acquisitions. One requisition may be used to request BPAs with several vendors for the same type of commodity (e.g., office supplies). The dollar amount applicable to each vendor should be clearly indicated. The certifying official forwards the requisition to AMD or the appropriate regional procurement personnel. Since BPA funding may not be carried over FYs, BPAs are normally written to expire at the end of the FY.

(c) Amendment to a Blanket Purchase Agreement

- (i) The BPA COR must initiate an amendment to a BPA by submitting a requisition to AMD to request a decommitment of funds, commitment of additional funds, or other administrative changes.
- (ii) Further information regarding BPAs may be found in FAR 13.303.

2. GSA Federal Schedule Contracts

- (a) The GSA FSSs are large contracts through which Federal customers can acquire more than 4 million products or services from more than 8,000 commercial vendors. The GSA Management, Organizational and Business Improvement Services schedule, for example, offers Government contracts that help agencies improve management and organizational effectiveness through the use of specialized consulting, facilitation, survey, and training services. Ordering from GSA schedules is discretionary, so agencies may order from the schedules at their option.
- (b) Using competitive procedures, GSA awards IDCs to commercial firms, requiring those firms to provide, under "schedule," specified supplies and services at stated prices for given periods of time. This process permits COs outside GSA to acquire items covered by these schedules without engaging in the time-consuming process of issuing invitations for bids or requests for proposals.
- (c) The schedules, often referred to as "GSA schedules," allow ordering offices to issue delivery orders directly to listed contractors, receive direct shipments, make payment directly to contractors, and administer the orders. Both single award schedules and multiple-award schedules are established by GSA. (See FAR Subpart 8.4, Part 38, and "Federal Property Management Regulations," 41 CFR Part 101-26, "Procurement Sources and Program." The procedures to be

followed in ordering from these schedules are set forth in FAR Subpart 8.4 and in GSA guidance.)

- (d) Of the estimated 4 million products and services available, approximately 1 million of these can be accessed through GSA Advantage. Orders may be placed on the GSA Advantage Web site at <http://www.gsa.gov/portal/content/104677>. GSA Advantage is a Federal online shopping service that provides an Internet acquisition solution for the Federal Government. Staff may purchase thousands of products and services offered by GSA schedule contractors directly from their personal computer. Orders less than the micro-purchase threshold may be purchased by using the Purchase Card.
- (e) The FSS system contains prices for comparable supplies or services being offered by more than one supplier. Further price reductions may be negotiated for large-volume purchases.
- (f) The contractor must sell to any authorized user of the multiple-award schedule at the prices and under the terms and conditions provided in the contract. The Government, however, incurs no obligation to buy anything.

3. Required Sources of Supply

The priority list for use of Government sources of supplies and services is located at FAR 8.002(a), at

https://acquisition.gov/far/current/html/Subpart%208_1.html#wp1082288. Mandatory sources of supplies and services include the Federal Prison Industries, Inc., (see <http://www.unicor.gov/>) and Nonprofit Agencies Employing People Who Are Blind or Severely Disabled (see <http://www.abilityone.gov/>).

XV. CONTRACT ADMINISTRATION

A. General

- 1. Contract administration is the management of the contract from the time of award through closeout to ensure that the contractor's total performance is under the terms of the contract and that the agency's contract objectives are fulfilled. The CO has the responsibility and authority for administering NRC contracts. However, a technically qualified individual is generally appointed as the CO's authorized representative to carry out specified functions as the CO's representative (COR). The COR's authority is limited to the delegation letter provided by the CO.
- 2. The contractor interacts with the agency and designates personnel who will inform the agency of progress on the contract. The business relationship may become intensive and complex and is characterized by change. The

administrative process must be adaptive and permit the contract to be modified to reflect necessary changes.

3. Some clauses contained in the general provisions of the standard agency contract are designed to accommodate the need for adjustment of the contract to reflect ongoing activities. These terms and conditions are extremely important and agency staff, as well as contractor personnel, must understand and be guided by them. These clauses define, for example, the change order process, agency property, agency delay of work, inspection and acceptance, payments, terminations, and numerous other activities. Many of these clauses incorporate the right of the agency to take unilateral action regarding the contractual agreement, an extremely important right in terms of the contract adjustment process. For example, the CO, under the changes clause of the contract, has the right to unilaterally direct that the design or specifications of the contract be changed as long as the changes are within the general scope of the contract. A followup mechanism permits adjustment of the contract terms, pricing, and/or schedule as they may have been affected by the unilateral order.
4. The COR's evaluation of the contractor's work should be completed at a level of detail and frequency commensurate with the nature of the work. The evaluation should center on determining actual progress toward the project objective, the general quality of the work to date, and the financial status of the contract. The COR considers whether the dollars expended thus far by the contractor are commensurate with the percentage of work completed. The basis from which some conclusions can be drawn about the performance of the contract as a whole is established by information gathered from—
 - (a) Day-to-day surveillance of the work,
 - (b) Technical reviews by the contractor,
 - (c) Conferences held by NRC project and procurement staff,
 - (d) Contractor spending plans,
 - (e) Quality and timeliness of deliverables, and
 - (f) MLSR progress reports.
5. While the COR is expected to maintain a working file, AMD retains the official contract file. The CO relies heavily on information submitted by the assigned technical and support staff. This information includes copies of all COR/contractor correspondence, COR/contractor conference summaries, trip reports, progress reports, and so forth. The official files for a contract are maintained by the CS. The COR should maintain a well-organized file of all materials related to his or her contract administration duties, including a copy of the contract, task orders, and

- modifications; each report submitted by the contractor; records of telephone calls and meetings; and copies of correspondence, including confirmation of all technical direction. It is not necessary for the COR to send copies of reports to the CS if a copy was provided to him or her by the contractor. However, original copies of incoming correspondence from the contractor should be provided to the CS for the official files. Copies of all written technical direction should also be provided to the CS. Generally, the COR should contact the CS regarding any matters that may affect the contract's terms or conditions. The CS will coordinate any significant contractual matters with the CO.
6. The CS should be notified in advance by the COR of any important meetings with the contractor and issues to be discussed that may affect the contract. Timely notification is essential to adequately research and discuss issues raised to mitigate any potential contract problems. (See "COR Delegation and Appointment Memorandum" available in the NEAT Libraries.)
 7. The COR and other contract administration staff must evaluate the technical status of the work with the intent of recommending appropriate action necessary to keep the work on course, even to the point of recommending that the contract be terminated in part or in whole.

B. Postaward Orientation Kickoff Meetings

Following the award of a contract and before the contractor initiates the implementation of a project, there should be a discussion to ensure that all parties involved have a common understanding of the goals and expected results as defined in the contract. There should also be a consensus about the performance requirements and administrative procedures that must be followed under contract terms and conditions. Depending upon the complexity of the contract, generally a contract valued at above the SAT, this discussion may form the basis for a kickoff meeting.

1. Meeting Objectives
 - (a) Aligns a team quickly with the objectives of a project to ensure that all work performed by the contractor is based on a common understanding.
 - (b) Creates team synergy around a common project goal or objective.
 - (c) Provides an initial understanding of how each team member fits into the larger effort.
 - (d) Ensures that any issues and misunderstandings regarding project objectives or tasks be addressed immediately.

- (e) Ensures that the team commences work as soon as possible towards meeting contract requirements and deliverable dates.
- (f) Leaves the contractor and NRC employees with a clear understanding of what is expected of all concerned parties.

2. Participants

A successful and comprehensive kickoff meeting should include the COR, CO, OGC, DFS, and OCFO as appropriate. It is important that various functions of the agency be present at this meeting to ensure that the contractor gets off to a good start and fully understands his or her responsibilities, especially concerning the completion of required security application forms. (See "Postaward Kickoff Meetings" in the NEAT Libraries.)

C. Monitoring Contractor Performance

1. General

- (a) Both the COR and the CS must monitor the contractor's performance closely to ensure that the work is satisfactorily performed promptly. Open and frequent communication with the contractor is paramount to this success. To control the contractor's cost expenditures and to ensure that NRC's objectives are met, contract provisions may require the contractor to obtain the CO's prior authorization and approval before taking specific actions or incurring certain costs.
- (b) For example, prior approval is required for—
 - (i) Certain subcontracting under cost-reimbursement-types of contracts and certain other contracts. (See FAR 44.201.)
 - (ii) Reimbursement of costs incurred in excess of cost limitations, within the total estimated cost, under cost-reimbursement type contracts.
 - (iii) Reimbursement for overtime and premium wage payments.
 - (iv) Unplanned travel and transportation.
 - (v) Equipment purchases that were not part of the contractor's proposal.
- (c) Because the circumstances requiring approval may directly relate to the technical performance of the work, the CO will consult with the COR before formally granting or withholding approval.

2. Past Performance Evaluations

FAR 42.15 requires that an evaluation of contractor performance be prepared for active contracts (except those awarded to the Federal Prison Industries and

nonprofit agencies employing people who are blind or severely handicapped) in excess of the SAT. (See FAR 42.1502.) Interim contractor performance evaluations are required annually and a final evaluation is required once the contract has ended. The CS will initiate the process by providing a CPAR form to the COR for completion. After reviewing the evaluation and making any changes, the CS sends the evaluation form to the contractor for review and comment. Finalized CPAR evaluations are stored in the Past Performance Information Retrieval System (PPIRS) for future retrieval by Federal agencies.

3. Technical Direction

- (a) The COR may give the contractor technical direction and clarification consistent with the delegated authority outlined in the contract. The COR cannot provide any direction to the contractor that increases or decreases the work, cost, or delivery requirements under the contract.
- (b) Frequent communication with the contractor may help to avert potential problems.
- (c) Contractor personnel issues must be referred to the contractor employee's management, including issues related to compensation when agency buildings have unscheduled closings.
- (d) Under the principles of commercial law, the "law of agency" assumes that three parties are involved: the principal, the agent, and a third party. The COR or CO performs as a representative (agent) of the U.S. Government (the principal) and deals with contractors (third parties). The acts of the agent may bind the principal to third parties and also may give the principal rights against third parties. A Government CO cannot enter into a contract without the statutory or regulatory authority to do so. If a CO enters into a contract without express authority, or if the action is prohibited by law or regulation, the contract becomes void and does not bind the Government.
- (e) The courts have consistently held that persons dealing with a Government agent are presumed to have notice of limitations on that individual's authority, even though the Government representative may have been unaware of them. However, NRC CORs who deal with a contractor should remember that their actions, although not so intended, may result in a constructive change (an informal alteration of the work being performed under the contract) for which the contractor may be entitled to compensation. For instance, if a COR asks a contractor to provide a service, a product, or other deliverables not clearly called for in the SOW, as incorporated into the contract, the contractor may be able to receive additional funding as a result of a claim against the agency. The COR may not authorize any work under the contract unless otherwise delegated by the CO for pre-priced products or services.

4. Changes in Contract Work

Contract work may be modified through a contract modification to clarify the requirement or subdivide the requirement to ensure that the contractor will provide an acceptable deliverable.

5. Subcontract Approvals

(a) A subcontract is a contract between a contractor and another supplier to furnish a part of the goods or services required under the prime contract (between the NRC and the contractor). (See FAR 44.201.) Under cost-reimbursement contracts, the contractor must obtain the CO's consent for placing the following types of subcontracts:

- (i) All cost-reimbursement, time-and-materials, and labor-hour subcontracts.
- (ii) Fixed-price subcontracts that exceed the SAT or 5 percent of the contract price.
- (iii) Subcontracts that provide for the fabrication, purchase, rental, installation, or other acquisition of special test equipment.
- (iv) Subcontracts that have experimental, developmental, or research work purposes.
- (v) Subcontracts that involve access to classified information, unescorted access to an NRC site or building, access to automatic data processing sensitive systems or information, unescorted access to nuclear power plants, or access to unclassified Safeguards Information.

(b) As requested by the CO, the COR must comment on the technical need for subcontracting, the technical capabilities of the proposed subcontractor, the adequacy of the subcontract work statement, and any aspect of the proposed subcontract the COR believes is not in the best interest of the NRC. If the proposed subcontract is unacceptable, the CO informs the prime contractor, and other arrangements must be made for the proposed work. These arrangements may involve altering some of the terms of the subcontract or selecting another subcontract source, depending on the reasons the subcontract was not approved. If the proposed subcontract is considered to be satisfactory, the CO gives written consent to its award.

6. Termination of Contractor Employee Access During Contract Performance

(a) In accordance with MD 12.3, the COR is responsible for ensuring access authorization is terminated when a contractor employee leaves during the contract performance period. The COR must determine when the contractor employee no longer needs unescorted access to NRC facilities, the NRC LAN,

and/or information systems. The COR immediately advises the FSB, and Personnel Security Branch, DFS, by e-mail. (See MD 12.3, Section II.)

- (b) The COR is required to—
- (i) Account for any classified or sensitive unclassified documents.
 - (ii) Arrange for immediate return of badges or passes.
 - (iii) Notify DFS to remove the person's name from all access lists.
 - (iv) Ensure that combinations for safes that the contractor's employee had access to are immediately changed.
 - (v) Arrange for the person's name to be removed from access permissions for all agency systems.

D. Task and Delivery Orders

The following information serves as general guidance for ordering supplies or services from IDCs. Carefully review each IDC (including EWCs) and follow specific ordering requirements and procedures provided.

1. Task or Delivery Order Requisition

- (a) The SOW should include a complete description of the work required, the estimated level of effort, the reporting requirements, the period of performance or delivery schedule, and any special requirements that may pertain to the task order.
- (b) The CO transmits a "Request for Task Order Proposal" (RFTOP) to the contractor.
- (c) By the date specified in the RFTOP, the contractor shall deliver to the CO a written technical and cost proposal. The cost proposal for the order must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts.

2. Issuance of Task Order

- (a) The COR will evaluate the contractor's proposal and submit an evaluation report or documentation to the CS within the established timeframe.
- (b) A definitized order is issued by the CO. Orders and modifications to orders are issued using OF 347, "Order for Supplies or Services." In cases of urgency, the NRC may require the contractor to immediately begin work before a formal task order can be negotiated. Accordingly, the CO may verbally authorize the contractor to begin work on the task, subject to the limitation or ceiling that the CO has established for the task order. When the NRC employs this accelerated procedure, the contractor agrees to begin promptly negotiating the terms of the task order. Once agreement is reached, a definitive task order is issued.

- (c) For task or delivery orders issued pursuant to FAR 16.5, see “Standard Ordering Procedures for Issuing Task and Delivery Orders Under Open Market Indefinite Delivery Contracts (IDC) Awarded by the Nuclear Regulatory Commission (NRC),” available in the NEAT Libraries.

E. Administration of Government-Furnished Property (GFP)

1. GFP must be furnished to contractors only through the CO to ensure that personal liability for this property is not inadvertently created. COs will ensure that the contractor, who is furnished with Government property or acquires it as a direct cost item under a cost-reimbursement-type contract, complies with the provisions of the clause on GFP. COs will determine whether title to NRC property should be retained by the NRC at the time approval is given for an equipment/property purchase or whether the title shall be vested with the contractor at the time approval is given for an equipment/property purchase.
 - (a) Title to equipment and other tangible personal property valued at less than \$5,000 is automatically vested in contractors that are nonprofit institutions of higher education or nonprofit organizations whose primary purpose is scientific research when the purpose of the contract is basic or applied research. For these same contractors, the CO may, at his or her discretion, vest title at higher dollar values without requiring consideration. The CO should consider other aspects to include the useful life of the property and the likelihood of reuse of the property by the NRC or a future contractor in reaching a determination.
 - (b) For all other contracts, if the CO determines that it is in the Government's best interest to vest title, the contractor must consider NRC's equivalent to the estimated fair market value of the property. The CO's determination should be documented in the negotiation summary and, if title will be vested, so stated in the contract document.
 - (c) Except in the case of a firm-fixed-price contract, the contractor shall obtain approval from the CO before making any purchase of equipment or property valued at \$500 or more with NRC funds.
2. When the NRC agrees to deliver certain materials to the contractor, the contractor's performance schedule is based on the assumption that the contractor will receive this property at the time stated in the schedule, or if the time is not so stated, soon enough for the contractor to meet required delivery dates. A time extension is normally allowed if the NRC causes a delay or if the property differs from specifications. The contractor also is entitled to a fair adjustment in the price of the procurement for additional costs that are caused by late delivery. Control of the property after delivery rests with the contractor, who must set up and administer a program to maintain, repair, protect, and preserve the property.

3. The CO approves the type and frequency of physical inventories of GFP that a contractor must make during the life of the contract. Inventories of movable equipment are made at least once each FY. More frequent inventories should be made of equipment easily appropriated for personal use. Upon termination or completion of a contract, the contractor is required to submit an inventory for the disposal of GFP for work under the contract.
4. Contractors shall be required to submit annually to the CO a detailed report of all NRC property held on September 30 of each year. The threshold for detailed reporting of capitalized equipment by contractors is \$50,000.
5. The contractor provides a monthly financial status report (FSR) to the COR and the CO. The FSR includes the acquisition of, or changes in the status of, property valued at the time of purchase of \$50,000 or more. A copy of the report is sent to the NRC Property Management Officer, PLSB, ADSC, ADM.
6. Procedures covering the loss, theft, damage, or destruction of NRC property are set forth in MD 13.1. Items removed from the contractor's custody during the year and their subsequent disposition also will be reported. The NRC may audit property records maintained by the contractor as often as conditions warrant. Records must always be reviewed when a contract is terminated or completed, before final payment and contract closeout.
7. Insert "Reporting Requirements" in the contract substantially the same as the following information:
 - (a) Contractors must report the purchase of any item of capital property (any property purchased with NRC funds with an initial acquisition cost of \$50,000 or more) to AMD. AMD will provide the contractor with an NRC bar code and equipment data sheet to record detailed information for each item (NRC bar code number, description of item, serial number, model number, manufacturer, location, date purchased, and purchase price). The contractor will have 10 workdays to return the required documentation to AMD. AMD will then provide the information to PLSB, ADSC, ADM, for recording in the SPMS. AMD will obtain any additional information required by OCFO. Contractors must conduct an annual inventory and report at the end of each FY all capital property in their possession that was purchased with NRC funds to AMD. AMD will remind CORs at least twice each year of their responsibilities to monitor contractor held property under pertinent MD requirements.
 - (b) At the time the contract is closed, the contractor must provide a final reconciled report to AMD listing all NRC-funded property in its possession. AMD will contact the Project Management Office, or designee, for disposition instructions for any contractor-held property during the closeout process.

F. Contractor Invoices

1. General

- (a) Invoices for NRC purchase orders, task orders, and contracts will be approved for payment under policies and procedures applicable to the apportionment, allotment, commitment, and obligation of funds.
- (b) The COR will review each of the invoices submitted by the contractor to determine whether payment should be made or disallowed. The CS also reviews the invoice to ascertain whether the contractor has expended a greater percentage of the contract's funds than can be justified by the contractor's technical progress, or if the contractor's billing exceeds money obligated under the contract. Reviewers of invoices for performance-based contracts should be aware of procedures for reducing the fee under CPFF contracts or reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements.
- (c) The Government promotes accelerated payments to small business concerns and to large businesses that have small business subcontractors. This serves to enhance cash flow and business operations.
- (d) Specific policies and procedures governing review and approval of contract invoices is provided through separate agency procedures. (See the "Acquisition Guidebook for Contracting Officer's Representatives" in the NEAT Libraries.)

2. Contract Requirements

- (a) The Anti-Deficiency Act prohibits Government officials or employees from authorizing or making obligations in excess of the amount available in an appropriation, an apportionment, a reapportionment, or an allotment. Any appropriation that is apportioned or reapportioned may only be divided and subdivided administratively within the limits of these apportionments or reapportionments. In addition, NRC's policies for administrative control of funds prohibit authorizing or making obligations in excess of allowances or financial plans. CORs are responsible for monitoring contract funding under NRC contracts. No officer or employee of the Government may create or authorize an obligation in excess of funds available. This policy applies to issuance of orders in excess of funds obligated under a contract.
- (b) FAR Subpart 32.9, which implements OMB prompt payment regulations at 5 CFR Part 1315, prescribes basic policies and procedures to be followed by executive departments and agencies in paying for property and services acquired in Federal contracts in the Prompt Payment Act of 1982, as amended.

- (c) Congress appropriates funds for NRC programs but does not directly control their expenditure. This control is provided by the laws and procedures that apply to the apportionment, allotment, commitment, and obligation of funds.
- (d) Fixed-price contracts containing the standard payments clause (FAR 52.232-1) provide that the contractor shall be paid upon submission of properly certified invoices.
- (e) Payment in cost-reimbursement-type contracts is made under the allowable cost and payment clause (FAR 52.216-7) and fixed-fee clause (FAR 52.216-8), if applicable. These clauses provide that upon performance of the contract, the agency will pay the contractor the cost as determined by the CO under the cost principles (FAR Part 31), the terms of the contract, and the fixed fee, if any, as may be provided in the contract schedule. These clauses also provide for monthly or more frequent payments, if approved by the CO, of costs plus a proportionate part of the fixed fee, with part of the fee withheld until completion of the contract.
- (f) The NRC fee policy is that the fixed-fee billed by the contractor will be paid up to 85 percent of the negotiated fee. Upon satisfactory completion of the contract closeout process, the remaining 15 percent will be released to the contractor. The CO may determine if a portion of these funds may be released earlier for expired task orders, when annual audits have been completed and there is no indication that the funds may be needed for adjustment in later years of the contract.
- (g) The payment method on termination of contracts generally is set out in the contract schedule, and the amount of fee due is determined by the CO by the percentage of work completed under the contract (FAR Part 49).
- (h) Under CPFF contracts, no agreement will be made as to the accuracy of amounts charged to or paid by the agency until a final cost audit is completed, including a review of indirect cost rate adjustments. Only then can the agency notify the contractor with respect to any overpayment. A CPFF contractor must reimburse the agency for any reductions in cost for which it has already been compensated. The agency retains the right to sue for recovery of overpayments on contracts despite long continuance of illegal overpayments before the error is discovered and regardless of how long it takes to recover overpayment. COs can and must seek recovery of any payments that have been made by mistake, even after final payment has been made, since no officer has the authority to give away rights vested in the Government.

3. General Invoice Review Process

(a) Invoice Review Requirements

The FAR states that there is no presumption of reasonableness associated with the incurrence of contractor costs. In ensuring due diligence, the agency must carefully review all contractor invoices and document that process.

(b) Invoice Review Responsibilities and Procedures

(i) CORs are required to—

- Review contractor invoices thoroughly to determine completeness, accuracy, and reasonableness of billed costs, including verification of indirect cost rates.
- Maintain appropriate documentation necessary to demonstrate thorough review of contractor invoices. Without documentation, the NRC does not have assurance that the costs billed were reviewed and accepted as allowable and reasonable.
- Document the invoice review process to show that the appropriate review was performed for each invoice as required by AMD. Proper documentation of an invoice review may be satisfied by completing approved invoice checklists required by AMD. Invoice checklists established by AMD must be used and followed consistently by all CORs.

(ii) The CO is ultimately responsible for the review and approval of each invoice submitted by the contractor. The extent of review of an invoice will depend upon the type of contract and its terms and conditions. The CO relies upon the COR to make an initial assessment of invoices and make a recommendation. General tasks normally associated with reviewing and approving invoices include ensuring that the invoice—

- Is not defective.
- Is accurate and complete and corresponds with the contract's terms and conditions.
- Includes invoiced costs that are allowable, allocable, and reasonable.
- Includes supporting information or documentation to substantiate billed costs, including source documents as necessary.
- Deducts amounts (i.e., fixed-fee in excess of 85 percent for cost-reimbursement contracts).
- Includes personnel that meet qualifications for labor categories in time-and-materials or labor-hour contracts.

- Includes hourly rates invoiced that coincide with contract rates and reflect the hours actually worked during the billing cycle covered.
- Includes other direct costs that are sufficiently supported (i.e., supplies, equipment, travel).

4. General COR Invoice Approval Procedures

As part of a COR's delegation of authority, he or she is responsible for reviewing invoices submitted by the contractor, and the CO is responsible for performing periodic reviews, as necessary, to ensure that CORs are fulfilling their roles.

(a) Determine Whether Payment May be Approved Based on Complete Contractor Documentation

- (i) The CORs must immediately assess and determine the accuracy and completeness of contractor invoices. Payments should not be made to contractors based on incomplete or unsubstantiated invoices. Invoice reviews should be based on multiple sources or types of information. As an example, a COR may determine that reviewing the contractor's invoice with supporting documentation, review of monthly status report, and contract terms and conditions may suffice. However, the review documentation must include sufficient detail to determine allowability and reasonableness of invoice costs.
- (ii) An MLSR is a monthly progress report that serves as an important tool in reviewing invoices and verifying amounts billed. This report identifies the project's progress, difficulties encountered, and future activity including planned hours or effort to be expended. However, without reviewing the invoice, the COR cannot accurately assure that the costs billed are reasonable and coincide with the work performed.
- (iii) Review of the contract or order is recommended to ensure that the invoice and supporting documentation adequately address contractual requirements affecting invoices and payment process.
- (iv) Without detailed information for invoiced costs, the COR cannot accurately determine whether costs incurred and paid by the NRC are allowable and reasonable for work performed.

(b) Ensure that Other Sources of Information are Used to Supplement Contractor Invoices

- (i) The cost of work performed indicated in contractor invoices should be consistent with the MLSR and other supplemental documentation. This includes information including the nature of the work, authorized amounts, and periods of performance.

- (ii) In instances where contractors are permitted to bill more frequently than monthly, the COR must continually refer to status reports for verification of work performed. When amounts or time differences are noted, the COR should contact the CO and contractor to immediately resolve any discrepancies.
- (iii) Invoices that are approved based on supporting cost documentation that includes different amounts (i.e., authorized hours, purchases, and travel) or period of performance presents a significant weakness in the invoice process and must be properly addressed by the COR and CO.

5. Available Invoice Tools

Required invoicing tools are available outside of MD 11.1. (See the “Invoice Review Guidance for CORs” in the NEAT Libraries.)

G. Modifying the Contract

1. General

FAR 43.101 defines “contract modification” as any written change in the terms of a contract. These changes include any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other provisions of an existing contract, whether accomplished by unilateral action under a contract provision or by mutual bilateral action of the parties to the contract.

2. Unilateral Contract Actions

When unilateral modifications are necessary to reflect changes in requirements, the CO may—

- (a) Issue administrative changes (e.g., COR or CO name changes, address changes, incremental funding, exercising contract options (within established timeframe));
- (b) Issue change orders (authorized under the changes clause);
- (c) Make changes authorized by clauses other than the changes clause; and
- (d) Issue termination notices.

3. Bilateral Contract Actions

- (a) Bilateral changes cannot be effected without the consent of the contractor and must be accomplished by agreement of both parties. The extent to which contracts may be modified by mutual consent is restricted. For example, provisions of the contract that are required by law may not be waived. Furthermore, no action may be taken that would be prejudicial to the interests of those who submitted bids on the original solicitation.

- (b) Bilateral modifications include the following:
 - (i) Equitable adjustments resulting from the issuance of change orders;
 - (ii) Definitizing letter contracts; and
 - (iii) Actions that reflect agreements of the parties modifying the terms of the contract by mutual agreement.
- (c) In some cases, the contractor is expected to provide consideration when making requests for changes to the contract. As an example, the contractor requests an extension of the contract delivery schedule because of a contractor delay. The CO may grant a time extension and request that the contractor provide consideration (something of value) in exchange (e.g., a reduction in cost, additional copies of a report, additional software or supplies, or training time if the deliverable is equipment). When a modification is necessary because of an agency delay, the contractor is not normally expected to provide any consideration.
- (d) The distinction between a new procurement and in-scope contract change is important in contract modifications. Generally, purchase of an additional quantity of supplies, products, or services is a new procurement and must be resolicited for competition. On the other hand, increasing the work to be performed within the scope of the contract and the existing period of performance is within the scope and need not be resolicited. The distinction depends on whether the proposed modification changes the nature of the overall work scope, increases the contract's estimated cost or ceiling price, increases the overall level-of-effort ceiling, or extends the contract term.

H. Spending Controls

1. Indirect Cost Rate Adjustments

- (a) Most contractors establish indirect rates to cover expenses that are not directly attributable to contract projects. These expenses, including rent, utilities, and administration salaries, are pooled and charged proportionately to all parties with whom they contract (customers). These costs are projected as provisional rates, and provisional rates are finalized after the contractor's FY ends. The final rates will be affected by other factors, including the number of customers the contractor has that will share the expenses. The NRC will normally fund negotiated final rates as long as a cost overrun does not occur and the contractor has complied with all contract terms concerning proper notice.
- (b) FAR 42.704(c) states that billing rates (provisional rates) may be retroactively revised by mutual agreement of the CO and the contractor, at either party's request. NRCAR 2052.216-71(b) states that the CO may adjust the rates

(provisional) as appropriate during the term of the contract if he or she accepts the revisions proposed by the contractor. To avoid complicated retroactive adjustments that delay the closeout process, the NRC provides authority for cognizant audit agencies to perform annual audits of provisional rates after submission of proposals by the contractors. Recommendations contained in audit reports must be acted on within 6 months.

- (c) Negotiation of final indirect rates may periodically create a need for the COR to reevaluate the use of remaining funding under the contract. The CS will work closely with the COR to plan for remaining expenditures.

2. Annual Audits

For cost-reimbursement contracts in excess of \$1 million or \$500,000 annually, the CS will typically require an annual audit to include all charges to the contract. This audit helps to project funding, avoid overpayment, and expedite closeout.

3. Cost Overruns

- (a) A cost overrun is an amount representing the actual cost of performing the original work that is greater than the amount estimated by the parties when the contract was executed. With effective contract monitoring, a cost overrun is a rare occurrence. (Cost growth occurs when unforeseen changes to the SOW require an equitable adjustment.)
- (b) Under fully funded cost-reimbursement-type contracts, the estimated total cost is a cost limitation and is stated in the contract in the form of a limitation-of-cost clause. If incrementally funded, the limitation-of-funds clause sets the amount of obligated funds as the limitation. The contractor does not have to continue performance once the limitation is reached unless the CO modifies the contract. If the contractor does exceed the limitation, the contractor does so at its own risk. (See FAR 52.232-20.)
- (c) The COR may determine, in consultation with the CS, that costs may exceed the limitation by his or her review of the contractor's MLSRs, monthly spending plans, invoices, and cost projections for the completion of the effort. The COR must decide to either accept the contract product "as is" without a further increase in funds to increase the contract amount (overrun funding) and allow for total completion of the contract product or service, or reduce the scope of work to stay within the current level of funding. This funding will cover costs only; no additional fee is provided for an overrun. If the contract amount will be increased, the COR is responsible for initiating the request for the increase in funds, including supporting documentation.

- (d) If an increase of the contract amount is determined to be appropriate, additional funds must be certified by the funds certifying official. Early review of a potential cost overrun preserves NRC's contractual rights.
 - (e) The limitation-of-cost (FAR 52.232-20) and the limitation-of-funds (FAR 52.232-22) clauses require the contractor to give the CO advance notice of a possible cost overrun when the contractor projects that 75 percent of the total estimated costs will be reached within 60 days. If the contractor believes that the total cost of performance will be substantially above or below the estimated cost, a revised cost estimate must accompany the notice. NRC personnel should avoid any informal action or implication that would lead a contractor to exceed the contract cost limitation or to assume that he or she may incur costs beyond the existing limitation. Any communication that may affect the incurrence of cost must be coordinated with the CS.
 - (f) Failure to provide this notice may not only jeopardize the contractor's ability to receive funding for any cost overrun but may also cause a delay in the completion of the project.
 - (g) The COR should closely monitor the contractor's financial reports and the contractor's spending plan to ensure that any funding problem is caught early. The COR should discuss any possible problems with the CS. Often, early attention can result in a revision to planned expenditures and eliminate the need to provide additional funds.
4. Deobligation of Excess Funds
- (a) Whenever it becomes apparent that funding obligated to a contract document will not be needed to perform under the SOW, excess funds should be deobligated. In most situations, the CS will modify the contract with the agreement of the contractor (bilateral). A unilateral deobligation can normally be accomplished if a dispute cannot be resolved. However, in this case, the contractor normally will have appeal rights.
 - (b) Although the CS monitors contracts to ensure that funding is provided for current needs and deobligated when appropriate, the COR should notify the CS whenever it becomes apparent that funds should be considered for deobligation on an active contract.

I. Fee-Recoverable Costs

If applicable to the contract terms, the contractor is required to state in each monthly reporting of cost (e.g., invoice or monthly report) whether license fee recoverable costs were incurred. The COR and the CS should review monthly cost reporting for fee-recoverable costs incurred.

J. Performance Problems and Remedies

1. Failure to Progress Satisfactorily

- (a) If the COR is not satisfied with the contractor's performance, he or she is responsible for notifying the contractor and the CO as soon as a problem is identified, considering the timeframe prescribed within the contract.
- (b) If the contractor is having difficulty in performing the work, or if the work is not progressing satisfactorily, several alternative solutions are available. Technical direction from the appropriate NRC employees may be the answer. Additional technical data could be furnished if this action would help solve the problem. When better results could be achieved if the contractor's efforts were redirected, revision of the SOW may be appropriate. In some cases, termination of the contract may be the only reasonable course of action. In any case, before any action may be taken, the CO must be consulted.
- (c) When the NRC is responsible for any aspect of contract performance, including providing material or information, approving plans, or prosecuting a subsequent phase of the work, every effort should be made to fulfill these responsibilities promptly so that the project can proceed and no contract delays can be attributed to the NRC.
- (d) Often the contractor can resume satisfactory performance after a series of meetings to identify the source of problems and after action has been taken by all parties to correct any misdirection. A bilateral contract modification may be appropriate, especially if needed to provide clarification of contract terms. To avoid unauthorized commitments, the CS must be involved in all of this activity.

2. Unsatisfactory Subcontractor Performance

When a subcontractor is performing unsatisfactorily, it is the contractor's responsibility to correct the situation. NRC employees, through the CS and the CO, should deal with the prime contractor and should not deal directly with the subcontractor, as the NRC does not have privity of contract with subcontractors. Direct contact with a subcontractor can result in unauthorized commitments.

3. Disputes

- (a) A "dispute" is a disagreement between the contractor and the CO regarding the rights of the parties under a contract. Under the Contract Disputes Act of 1978, contractors are permitted to submit claims (demands for a "sum certain") against the Government; conversely, the Government may make claims against contractors.

- (b) A dispute arises between a contractor and the Government during or after the performance of a contract. A dispute originates when a claim is denied by the party against which it is made.
- (c) The NRC stands by the Government's policy to try to resolve all contractual issues in controversy by mutual agreement at the CO level. Reasonable efforts should be made to resolve controversies before the submission of a claim. The use of alternative dispute resolution (ADR) procedures is encouraged to the maximum extent practicable. "ADR" means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These methods include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, factfinding, mini-trials, and arbitration.
- (d) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement, and a decision on the claim is necessary, the CO will review the facts pertinent to the claim. The CO will secure help from OGC; SBP, if appropriate; and other advisors, and coordinate with the CS and prepare a written decision that will include a description of the claim or dispute, a reference to the pertinent contract terms, a statement of the factual areas of agreement and disagreement, and a statement of the CO's decision with supporting rationale. If resolution cannot be reached, final decisions of the CO on contract disputes will be heard by the DOE Board of Contract Appeals under an interagency agreement between the NRC and DOE. More information regarding disputes may be found in FAR Part 33.

4. Remedies

(a) General

There are some remedies at the agency's disposal that may be used when contractor performance is not meeting the requirements of the contract, the agency no longer needs a requirement or part of the requirement, or the agency needs time to make a decision regarding advancements in state-of-the-art technologies or processes, productions, or realignment of programs.

(b) Stop-Work Order

- (i) A stop-work order is a unilateral order in which the CO requires the contractor to stop all or any part of the work called for under the contract. Stop-work orders may be issued if the contract contains a suspension of work clause (FAR 52.242-14) or a stop-work-order clause (FAR 52.242-15). They are optional in contracts for supplies, services, or research and development. These clauses give the contractor an adjustment in the price to compensate for costs incurred because of the order.

- (ii) A stop-work order may not be used in place of a termination notice after a decision to proceed with a termination for default has been made. (See FAR 42.13.)

(c) Termination

- (i) "Termination for convenience" is the right of the agency to terminate or cancel performance of work under a contract, in whole or in part, if the CO determines that termination is in the agency's best interest. This action is normally taken only if the agency no longer needs the product or services. Under a termination for convenience, the agency and contractor normally will negotiate a settlement in which the Government pays for any expenses the contractor incurs in carrying out the termination. Once a contract is terminated for convenience, the Government normally may not immediately initiate a contract for the same work.
- (ii) "Termination for default" is the right of the agency to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations. To terminate a contract for default, it is imperative that the COR accurately and promptly assess the contractor's progress and document any problems. The COR must notify the CS promptly and provide information to the CO who must determine, normally with the contractor's input, whether the contractor can make satisfactory corrections. This is best accomplished by addressing every incidence of unsatisfactory performance as soon as it occurs. The contractor has fewer settlement rights, and the work may be placed with another contractor.
- (iii) The COR will immediately advise DFS and OIS by e-mail of pending contract terminations when contractor access to the NRC LAN, information systems, or NRC building access is involved. The contractor employee's badge should be returned to DFS immediately (no later than 3 days) after termination. Terminating contractor access authorizations will be handled in accordance with MD 12.3, Section II.
- (iv) More information may be found on termination of contracts in FAR Part 49.

K. Unauthorized Commitments

1. General

- (a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated or by those individuals who have acted outside of their authority (e.g., changes to the SOW, delivery schedule, or an increase or decrease of the costs under the contract). Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, FAR,

NRCAR, and other Federal laws. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment. Examples of these requirements are the certification of the availability of funds, JOFOC, competition of sources, determination of contractor responsibility, certification of current pricing data, price and cost analysis, administrative approvals, and negotiations of appropriate contract clauses.

- (b) The execution of otherwise proper contracts made by individuals without contracting authority, or by COs in excess of the limits of their warrant authority, may later be ratified.
- (c) All ratifications of procurement actions of any value may be approved by the appropriate regional administrator (RA) or headquarters HCA. All ratification actions, regardless of dollar value, must be reviewed by OGC. Ratification actions exceeding the micro-purchase threshold, at headquarters and in the regions, must also be reviewed by the CA before approval by the RA or Director of AMD. (See FAR 1.602-3 for information on reviews and approval of ratifications.)

2. Requests for Ratification of an Unauthorized Commitment

Requests for ratification of an unauthorized commitment by an employee without proper authority must be initiated by the DO. He or she is responsible for furnishing all relevant documentation to the CO, including, but not limited to—

- (a) A written statement consistent with the complexity and size of the action as to why the contracting office was not used, including the name of the employee who made the commitment and a statement that funds were available at the time of the unauthorized commitment.
- (b) A statement as to why the proposed contractor was selected.
- (c) A list of other sources considered.
- (d) A description of work performed, to be performed, or products to be furnished.
- (e) The estimated or agreed-upon contract price.
- (f) A certification of the appropriated funds available, signed by an authorized funds certifying official.
- (g) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

3. Notification Requirement of Insufficient Funds

The Director of the Division of Planning and Budget, OCFO, should be immediately notified if there are insufficient funds available to cover an unauthorized commitment that should otherwise be ratified.

L. Contractor Differing Professional Opinions (DPOs)

1. It is NRC's policy to maintain a working environment that encourages its staff to express their best professional judgment, even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices. MD 10.159, "The NRC Differing Professional Opinions Program," establishes procedures for NRC employees to express differing professional opinions (DPO). A similar procedure provides NRC contractor personnel with a comparable DPO process. This process supports the contractor's expression of professional concerns related to health and safety associated with the contractor's work for the NRC. These concerns may—
 - (a) Differ from a prevailing NRC employee's view;
 - (b) Disagree with an NRC management decision or policy position; or
 - (c) Take issue with proposed or established agency practice involving technical, legal, or policy issues.
2. An occasion may arise when an NRC contractor, or the contractor's or subcontractor's personnel, believes that a conscientious expression of a competent judgment is required to document concerns on matters directly associated with its performance of the contract. The contractor DPO procedure to provide for the expression and resolution of DPOs described above is included in the solicitation. The contractor shall provide a copy of the NRC DPO procedure to all of its employees performing under its contract and to all subcontractors, who will, in turn, provide a copy of the procedure to its employees.
3. The NRC may authorize up to 8 reimbursable hours for the contractor, or the contractor's or subcontractor's personnel, to document a DPO in writing. In the event sufficient funds are not available under the contract, the contractor shall first obtain authorization from the CO providing sufficient funds to cover the cost of preparing the DPO. With the exception of the above-specified payment for 8 hours of work on a DPO, the contractor shall not be entitled to any additional compensation or additional work under its contract by virtue of the DPO submission. A subcontractor's DPO shall be submitted through the prime contractor. The prime contractor or subcontractor shall submit all DPOs received but need not endorse them.

4. Contract funds shall not be authorized to document an allegation in the following instances for which the use of the NRC contractor DPO process is inappropriate:
 - (a) Allegations of wrongdoing, which should be addressed directly to OIG;
 - (b) Issues submitted anonymously;
 - (c) Issues that the NRC deems to be frivolous or otherwise under the policy underlying these procedures; and
 - (d) Issues raised that have already been considered, addressed, or rejected, absent significant new information.
5. Note that this procedure does not provide anonymity. Individuals desiring anonymity should contact OIG or submit the information under NRC's Allegation Program, as appropriate.
6. Each DPO shall be submitted in writing and will be evaluated on its own merits.
7. When required, the contractor shall initiate the DPO process by submitting a written statement directly to the NRC OD or the RA responsible for the contract, with a copy to the CO.
8. The DPO, while being brief, shall contain the following as it relates to the subject matter of the contract:
 - (a) A summary of the prevailing NRC view, existing NRC decision or stated position, or the proposed or established NRC practice;
 - (b) A description of the submitter's views and how they differ from any of the above items; and
 - (c) The rationale for the submitter's views, including an assessment based on risk, safety, and cost-benefit considerations of the consequences, should the submitter's position not be adopted by the NRC.
9. The OD or the RA will immediately forward the submittal to the NRC DPO ad hoc review panel (see MD 10.159) and acknowledge receipt of the DPO, ordinarily within 5 calendar days of receipt.
10. The OD or the RA will select members for an ad hoc panel generally within 8 calendar days.
11. The panel will normally review the DPO within 7 calendar days of receipt to determine whether enough information has been supplied to undertake a detailed review of the issue. Typically, within 30 calendar days of receipt of the necessary information to begin a review, the panel will provide a written report of its findings, including a recommended course of action, to the OD or the RA and to the CO.

12. The OD or the RA will consider the DPO review panel's report, make a decision on the DPO, and provide a written decision to the contractor and the CO, normally within 10 calendar days of receipt of the panel's recommendation.
13. After the decision is made regarding the DPO review panel's report, a summary of the issue and its disposition will be included in the NRC Weekly Information Report submitted by the OD or the RA. The DPO file will be retained in the requirement office or region for a minimum of 1 year. For purposes of the contract, the DPO shall be considered a deliverable under the contract. On the basis of the OD or the RA report, the matter will be closed.

M. Final Past Performance Evaluation

1. FAR 42.15 requires that final evaluations be prepared for all expiring contracts in excess of the SAT (except those awarded to the Federal Prison Industries and nonprofit agencies employing people who are blind or severely handicapped or for construction and A-E services included in FAR 42.1502). This information will be used to provide current information to NRC SEPs and to other Federal agencies that request it for source selection purposes.
2. Careful evaluation of the contractor's performance after completion of the contract is very important, as it serves as a valuable guide in determining the contractor's suitability for future work. The COR should prepare a concise, written report of the evaluation in consultation with the CS. The evaluation report should be kept on file in AMD for future reference to provide useful data for future source selection activities. The report should cover—
 - (a) Contractor's compliance with terms and conditions governing the quality of the product or service.
 - (b) Contractor's success in meeting schedules.
 - (c) Contractor's success in performing within contract costs.
 - (d) Contractor's business relations with NRC employees while performing the contract.
 - (e) Contractor's management of key personnel.
 - (f) Recommendation to other Federal employees who are considering the contractor for further solicitations.

N. Contract Closeout

1. Under FAR 4.804, orderly and timely closeout of all contract files for expired contracts will be within the following time standards:
 - (a) Simplified acquisitions should be closed once the CO receives evidence of receipt of supplies or services and final payment.
 - (b) Firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the CO receives evidence of physical completion.
 - (c) Cost-reimbursement contracts or contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the CO receives evidence of physical completion.
2. Although physical completion fulfills the agency's objective in awarding the contract, a contract is not closed until it has been administratively completed, that is, all activities leading to completion and final payment have been completed.
3. The COR is responsible for initiating a request for contract closeout by submitting a requisition to AMD.
4. Before a contract may be formally closed, the CO must ascertain that the contractor has met the obligations under the contract. The activities leading to final payment include the following:
 - (a) Disposition of classified material is completed.
 - (b) Final patent/royalty report is cleared.
 - (c) There is no outstanding value engineering change proposal.
 - (d) Plant clearance report is received.
 - (e) Property clearance is received from the Property Management Officer, PLSB, ADSC, ADM.
 - (f) All interim or disallowed costs are settled.
 - (g) Price revision(s) is completed.
 - (h) Subcontracts are settled by the prime contractor.
 - (i) Prior year indirect cost rates are settled.
 - (j) Termination docket is completed.
 - (k) Contract audit is completed.

- (l) Contractor's final deliverables have been received.
 - (m) Contractor's final invoice has been submitted.
 - (n) Contract funds review is completed.
 - (o) Unliquidated obligations (excess funds) are deobligated from the contract.
 - (p) All outstanding claims are resolved (resolution).
 - (q) All end items and data, including deliverables, services, and interim and final technical reports have been accepted.
 - (r) Disposition of Government property has been verified.
 - (s) All required contractor reports, releases, and assignments have been received.
5. The contractor must immediately return all contractor badges and passes and any classified and sensitive unclassified information.
 6. The NRC completes a final audit in the case of cost-type contracts. Review by audit personnel normally is accomplished by the DCAA and, in some cases, the legal staff and other NRC offices also may be required to review the contract before the DOC, OCFO, can make final payment. (See FAR 4.804-5 for information on contract closeout.)
 7. The CS performs all required actions to administratively close out contracts, including deobligation of unliquidated obligations (excess funds) within 90 days of contract expiration. The COR responds to AMD closeout requests under the assigned project.
 8. The early deobligation/holdback process is needed to determine if the outstanding funds in the agency's accounting system (Financial Accounting and Integrated Management Information System - FAIMIS) are available for deobligation or if any funds should be held back for the following reasons:
 - (a) Funds are due to the contractor for remaining portions of the contractor's unpaid 15 percent fixed-fee.
 - (b) Funds may be needed for potential indirect cost rate adjustments.
 - (c) Funds may be owed for unresolved/suspended vouchers.
 9. The information in the contract file should match the accounting system balance information.
 10. A requisition must be submitted to deobligate funds regardless of the amount of funds to be deobligated. Also, a bilateral modification, SF 30, "Amendment of Solicitation/Modification of Contract," shall be completed for each deobligation action.

11. If funds are being held back, the AMD closeout specialist will provide a holdback form for completion to the cognizant CO or the CS of the contract. The closeout specialist transmits the completed form to OCFO indicating the amount of funds for holdback.

O. Terminating Contractor Access Authorizations During Closeout

1. When all work and services have been completed (or if a contractor has been terminated or a contractor employee leaves during contract performance), the COR immediately advises DFS (FSB and PSB) and OIS by e-mail if the access to the NRC LAN and/or to information systems is no longer required so that access authorizations may be terminated as appropriate. In those situations in which contractor personnel no longer require access to NRC facilities, the COR will retrieve NRC security identification badges or passes and forward them to DFS immediately (no later than 3 days) after the contractor employee leaves or is terminated. DFS will then terminate the contractor employee's access clearance and any applicable key card access.
2. Clearance of subcontractors requires completion of all the above-noted procedures, including initiation of security access forms, the SOW, and copies of the proposed subcontracts.
3. All security matters regarding contracts are handled addressed in MD 12.1 and MD 12.3. MD 12.3, Section II, discusses access terminations specifically. All contractually related security questions must be coordinated with both DFS and AMD.

EXHIBIT

Exhibit 1	Acronyms
8(a)	Section 8(a) of the Small Business Act – 8(a) Small Business Program
A-E	architecture-engineering
ACM	Acquisition Career Manager
ADAMS	Agencywide Documents Access and Management System
ADM	Office of Administration
AMD	Acquisition Management Division, Office of Administration (acquisition office)
ADR	alternative dispute resolution
ADSC	Associate Directorate for Space Consolidation
APP	advance procurement plan
BAA	broad agency announcement
BPA	blanket purchase agreement
CA	competition advocate
CAA	cognizant audit agency
CAO	Chief Acquisition Officer
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CICA	Competition in Contracting Act
CIO	Chief Information Officer
CLIN	contract line item number
CNWRA	Center for Nuclear Waste Regulatory Analyses
CO	contracting officer
COC	Certificate of Competency
COI	conflict of interest
COR	contracting officer's representative

CPAR	Contractor Performance Assessment Reports
CPARS	Contractor Performance Assessment Reporting System
CPFF	cost-plus-fixed-fee
CPIC	Capital Planning and Investment Control
CR	Continuing Resolution
CS	contract specialist
CSP	contractor spending plan
D&F	determination and findings
DCAA	Defense Contract Audit Agency
DFS	Division of Facilities and Security, Office of Administration
DOC	The Controller, Division of the Controller, Office of the Chief Financial Officer
DO	designating official
DOE	Department of Energy
DOL	Department of Labor
DPO	differing professional opinion
DSBS	Dynamic Small Business Search
EDO	Executive Director for Operations
EDWOSB	economically disadvantaged women-owned small business
EIT	electronic and information technology
EPA	Environmental Protection Agency
EPEAT	electronic product environmental assessment tool
EWC	enterprisewide contract
FAC-C	Federal Acquisition Certification in Contracting
FAC-COR	Federal Acquisition Certification for Contracting Officer Representatives
FAC-P/PM	Federal Acquisition Certification for Program and Project Manager

FAIMIS	Financial Accounting and Integrated Management Information System
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act
FCO	funds certifying official
FBO	Federal Business Opportunities (FedBizOpps)
FEDSIM	Federal Systems Integration and Management Center
FEMP	Federal Emergency Management Program
FFP	firm-fixed-price
FFRDC	Federally funded research and development centers
FSB	Facilities Security Branch, Division of Facilities and Security, Office of Administration
FSR	financial status report
FSS	Federal Supply Schedule
FSSI	Federal Strategic Sourcing Initiative
FY	fiscal year
G&A	general and administrative expense
GAO	Government Accountability Office
GFP	Government-furnished property
GHG	greenhouse gas (emissions)
GSA	General Services Administration
HCA	Head of Contracting Activity
HUBZone	Historically Underutilized Business Zone
IFB	invitation for bid
IGCE	independent Government cost estimate
IT	information technology
IDC	indefinite delivery contract
ISSO	Information System Security Officer

JOFOC	justification for other than full and open competition
LAN	local area network
LPTA	lowest price technically acceptable
MAC	multi-agency contract
MAS	multiple award schedule
MD	management directive
MLSR	monthly letter status report
NEAT	U.S. Nuclear Regulatory Commission's Enterprise Acquisition Toolset
NRC	Nuclear Regulatory Commission
NRCAR	Nuclear Regulatory Commission Acquisition Regulation
OCFO	Office of the Chief Financial Officer
OCHCO	Office of the Chief Human Capital Officer
OCOI	organizational conflict of interest
OD	office director
ODC	other direct costs
OF	optional form
OFPP	Office of Federal Procurement Policy
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OIS	Office of Information Services
OMB	Office of Management and Budget
PA	purchasing agent
PALT	procurement acquisition lead time
PBA	performance-based acquisition
PBC	performance-based contracts
PBSA	performance-based services acquisition

PC	portfolio council
PLSB	Property and Labor Services Branch, Directorate for Space Planning and Consolidation, Office of Administration
PPT	Procurement Policy Team, Acquisition Management Division, Office of Administration (acquisition office)
PPIRS	Past Performance Information Retrieval System
PSB	Personnel Security Branch, Division of Facilities and Security, Office of Administration
PWS	performance work statement
Q&A	questions and answers
RA	regional administrator
RFI	request for information
RFP	request for proposal (solicitation)
RFQ	Request for Quotations
SAM	System for Award Management
SAT	simplified acquisition threshold
SBA	Small Business Administration
SBCR	Office of Small Business and Civil Rights
SBP	Small Business Program
SDB	small disadvantaged business
SDVOSB	service-disabled veteran-owned small business
SEP	source evaluation panel
SF	standard form
SNAP	Significant New Alternative Policy
SOO	statement of objectives
SOW	statement of work
SPE	Senior Procurement Executive
SS	sources sought notice

SSA	source selection authority
SSG	strategic sourcing group
STAQS	Strategic Acquisition System
SubCLIN	contract subline item number
T&M	time-and-materials
TO	task order
U.S.C.	<i>United States Code</i>
USDA	U.S. Department of Agriculture
VOSB	veteran-owned small business
WBS	work breakdown structure
WOSB	women-owned small business